

Exhibit 6

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Transcript of **William E. English, Ph.D.**

Friday, September 13, 2019

Doe No. 1 et al v. Putnam County et al

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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF NEW YORK

3 Civil Action No. 7:16-cv-8191

4 - - - - - x

5 JOHN DOE NO. 1; JOHN DOE NO. 2; and :

6 NEW YORK STATE RIFLE AND PISTOL :

7 ASSOCIATION, INC., :

8 Plaintiff, :

9 v. :

10 PUTNAM COUNTY, and MICHAEL C. :

11 BARTOLOTTI, in his official capacity :

12 as County Clerk for Putnam County, :

13 Defendants. :

14 - - - - - x

15 Friday, September 13, 2019

16 Deposition of: WILLIAM E. ENGLISH, Ph. D.,
17 called for examination by counsel for Defendants,
18 pursuant to notice, at the Law Offices of Cooper &
19 Kirk, 1523 New Hampshire Avenue, NW, Washington,
20 D. C., commencing at 9:36 a. m., before Barbara A.
21 Huber, CSR and Notary Public in and for the
22 District of Columbia

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22 * * * * *

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1 PROCEEDINGS

2 Whereupon,

3 WILLIAM E. ENGLISH, Ph.D.,

4 was called as a witness and, having been first duly

5 sworn, was examined and testified as follows:

6 EXAMINATION BY COUNSEL FOR DEFENDANTS

7 BY MR. DAGUE:

8 Q Good morning, Dr. English. How are you?

9 A Good morning. Very well. Thank you.

10 Q We met a few minutes ago off the record.

11 Let me formally introduce myself. My name is

12 Harris Dague. I'm an Assistant Attorney General

13 with the State of New York, out of our Albany

14 office.

15 I'm joined by my colleague, Monica

16 Connell, to my left. She is an Assistant Attorney

17 General Special Counsel with the State of New York

18 out of our New York City office.

19 Nice to meet you, sir.

20 A Likewise.

21 Q Have you ever been deposed before?

22 A I have, yes.

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1 Q Okay. I'm going to ask you about that in

2 a few minutes, but let me run through some rules

3 and things that'll maybe make this go smoother and

4 get us both out of each other's hair sooner rather

5 than later.

6 A Great.

7 Q You probably know these if you've been

8 deposed, so don't worry about it if you know them

9 already. I'm going to ask you a series of

10 questions today.

11 Can you provide me with verbal answers?

12 A Yes.

13 Q Okay. Barbara, the court reporter here,

14 is taking down everything we say. To the extent

15 you nod or provide an "uh-huh," which is common

16 parlance, it's harder for her to take down so we

17 try to get a clean transcript. By the same token,

18 let's both try not to talk over one another. I

19 know that is very tempting, especially as the

20 afternoon wears on and my questions get less and

21 less sharp and you know where I'm going. If we do,

22 your counsel or I'll just remind you,

<p style="text-align: right;">Page 6</p> <p>1 non-insultingly, that, okay, let's try not to talk</p> <p>2 over each other here. And I --</p> <p>3 A Sounds good.</p> <p>4 Q -- will try to do the same. I could be</p> <p>5 guilty of it as well.</p> <p>6 If you don't understand my question,</p> <p>7 please ask me to rephrase it. You're not going to</p> <p>8 insult me in any way. Sometimes questions are</p> <p>9 ill-formed, especially when talking about kind of</p> <p>10 complex data and things of that nature. So just</p> <p>11 ask me to make sure you understand the question or</p> <p>12 ask me to rephrase it.</p> <p>13 If you answer a question, is it fair for</p> <p>14 me to assume that you understood the question?</p> <p>15 A Right. Yes.</p> <p>16 Q Okay. This is not a quiz. I'm not here</p> <p>17 to trick you. So, again, if you think a question</p> <p>18 doesn't make sense or sounds tricky, just let me</p> <p>19 know that and I'll rephrase it, because that's not</p> <p>20 the goal. We all want a clean transcript that we</p> <p>21 can use.</p> <p>22 As your counsel probably advised you,</p>	<p style="text-align: right;">Page 8</p> <p>1 Q And just to be clear, I'm not asking you</p> <p>2 to testify as to the content of those discussions,</p> <p>3 just the time generally.</p> <p>4 Who was present when you met in person?</p> <p>5 A Two counsels to my right.</p> <p>6 Q Referring to Davis and Chuck Cooper?</p> <p>7 A Yes.</p> <p>8 Q And who was present when you were on the</p> <p>9 telephone -- two phone calls, if you know?</p> <p>10 A I believe it was the same two counsels.</p> <p>11 And I believe there was a third lawyer. Perhaps</p> <p>12 Pete.</p> <p>13 Q Okay. And do you know if this third</p> <p>14 lawyer worked with Mr. and Mr. Cooper?</p> <p>15 A Yes. At this same firm.</p> <p>16 Q At any time during these prep sessions</p> <p>17 did you review any materials?</p> <p>18 A What do you mean by review materials?</p> <p>19 Q Did any of your counsel provide you with</p> <p>20 documentary records to review in preparation for</p> <p>21 the deposition?</p> <p>22 A Oh, yeah. They provided me, I believe,</p>
<p style="text-align: right;">Page 7</p> <p>1 breaks are fine. The only thing I would ask is if</p> <p>2 you do want break, a bathroom break or something,</p> <p>3 just let's not take one when there's a question</p> <p>4 pending. Answer the question. Let me know. Take</p> <p>5 a break.</p> <p>6 I try to take a five-minute break every</p> <p>7 hour or so anyway, just to stretch out, you know,</p> <p>8 use the bathroom, get fresh.</p> <p>9 Okay. Could you just state your full</p> <p>10 name for the record, Doctor?</p> <p>11 A Yeah. William Edward English.</p> <p>12 Q Okay. And are you a Ph.D.?</p> <p>13 A I am.</p> <p>14 Q In what?</p> <p>15 A My Ph.D. is in political science.</p> <p>16 Q Okay. And did you meet with counsel in</p> <p>17 preparation for today?</p> <p>18 A Yes.</p> <p>19 Q How many times?</p> <p>20 A Oh, I don't remember off the top of my</p> <p>21 head. We probably had at least two phone calls and</p> <p>22 at least one in-person discussion.</p>	<p style="text-align: right;">Page 9</p> <p>1 documents that had already been from the court, and</p> <p>2 explaining the judge's initial decisions.</p> <p>3 Q Okay.</p> <p>4 A And then they provided me with the expert</p> <p>5 witness reports that I was asked to comment upon.</p> <p>6 Q Okay. And did they provide you,</p> <p>7 obviously, with a copy of your expert report in</p> <p>8 this matter to review as well, prior to this</p> <p>9 deposition?</p> <p>10 A Yes.</p> <p>11 Q Did they provide you at any time with a</p> <p>12 copy of the civil complaint in this action?</p> <p>13 A Yes.</p> <p>14 Q And when I say civil complaint, do you</p> <p>15 know what I mean by that?</p> <p>16 A I believe so.</p> <p>17 Q Okay.</p> <p>18 A If I -- if I've understood that correct,</p> <p>19 this is the -- the initial objection to this law,</p> <p>20 and then, as well, the judge's -- whatever stage</p> <p>21 it's at right now. My recollection is that running</p> <p>22 through the arguments of the case, the potential</p>

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1 focal points and -- and questions that have been
2 identified.
3 Q Okay. So fair to say that you saw a
4 document called "complaint," which you understand
5 to be the document that initiated this lawsuit
6 challenging the law, and you saw, at some point, a
7 determination or decision from a judge in this case
8 that went through the issues and arguments and made
9 a rule?
10 A Yes. I -- I definitely saw the latter.
11 I -- I believe the -- the complaint may have been
12 summarized in that latter statement. I'm not sure
13 if --
14 Q Sure.
15 A -- was a separate PDF or --
16 Q Do you review civil complaints frequently
17 in your field?
18 A I do not.
19 Q How many civil complaints would you
20 estimate you've reviewed in your -- in your
21 professional --
22 A And by reviewed --

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1 Q -- career?
2 A -- just to clarify, you mean read, seen,
3 offered a professional opinion on?
4 Q How about offered professional opinions
5 on.
6 A Yeah. Probably one other.
7 Q Okay. In preparation for the issuance of
8 your expert report, did you meet with anyone
9 associated with the National Rifle Association?
10 A I did not.
11 Q In preparation for your deposition
12 testimony today, did you meet with anyone
13 associated with the National Rifle Association?
14 A And just to be clear, associated, what
15 does associated --
16 Q Sure. That's a fair question.
17 A I -- I gather, from the conversation
18 earlier, that Mr. Cooper has done work with the
19 NRA. Does that make him an associate?
20 Q Sure. That's fair. That's a very fair
21 question. And I will -- let me rephrase.
22 In preparation for your deposition today,

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1 did you meet with any officials of the NRA?
2 A No.
3 Q In preparation for your expert report,
4 did you meet with any of the named Plaintiffs in
5 this lawsuit, either John Doe Number 1 or John Doe
6 Number 2?
7 A I did not.
8 Q Have you ever met John Doe Number 1 or
9 John Doe Number 2, as they are styled in this
10 lawsuit?
11 A I have not.
12 MR. DAGUE: If you would mark that as
13 Defendants' Exhibit 1.
14 (Defendants' Deposition Exhibit No. 1
15 marked for identification.)
16 BY MR. DAGUE:
17 Q Dr. English, I've handed you what's been
18 marked as Defendants' Exhibit 1. I'm going to ask
19 you just to take a brief look at that, familiarize
20 yourself with it. I'm, obviously, going to have a
21 lot of questions on that particular document
22 throughout the deposition, but at this point I just

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1 want you to identify it.
2 A Yes. This is my expert witness report.
3 Q Okay. And that's the report that you
4 drafted and submitted in this action, right?
5 A That is correct.
6 Q And this report that you're looking at
7 constitutes your entire expert opinion in this
8 matter?
9 A I was the -- my entire opinion on what I
10 was asked to do, which is to evaluate the three
11 expert witness reports --
12 Q Sure.
13 A -- that I was given.
14 Q And at this point, what I meant by that
15 is there's no supplemental --
16 A There's not --
17 Q -- to this?
18 So at this point, there's no supplements
19 or amendments to this document that you know of?
20 A Correct.
21 Q Okay. Did anyone assist you with the
22 creation of this report?

<p style="text-align: right;">Page 14</p> <p>1 A To be clear about --</p> <p>2 Q Yeah, let me be clear. I'm not looking</p> <p>3 for any specific details, what -- if counsel</p> <p>4 assisted you with creation of this, so let me</p> <p>5 specify.</p> <p>6 Did anyone non-counsel to you in this</p> <p>7 action assist you with the creation of this report?</p> <p>8 A No.</p> <p>9 Q You don't have any research assistants</p> <p>10 that assisted you on this?</p> <p>11 A Not on this, no.</p> <p>12 Q Does this report include your opinions</p> <p>13 with respect to the questions that counsel asked</p> <p>14 you to respond to?</p> <p>15 A It does.</p> <p>16 Q And this report was issued on or about</p> <p>17 July 23rd of 2019; is that fair?</p> <p>18 A Yes.</p> <p>19 Q And since July 23rd of 2019, do you have</p> <p>20 any amendments or changes that you'd like to offer</p> <p>21 to this report at this point?</p> <p>22 A No.</p>	<p style="text-align: right;">Page 16</p> <p>1 sometimes intentional, sometimes not intentional --</p> <p>2 people misuse or misunderstand data.</p> <p>3 And so a -- a good portion of my work has</p> <p>4 been to take studies, and often important studies,</p> <p>5 and examine their underlying data or methods or</p> <p>6 statistical approaches, and to try to evaluate</p> <p>7 their conclusions in the light of their particular</p> <p>8 claims as well as in light of larger say public</p> <p>9 policy, debates that they feed into.</p> <p>10 So I think of myself as a methodologist,</p> <p>11 someone who's interested in public policy. And my</p> <p>12 work has also examined problems of institutional</p> <p>13 failures, institutional design, role of informal</p> <p>14 norms, informal institutions. And I'm in a -- in</p> <p>15 the department of -- of ethics, economics, and</p> <p>16 public policy. So I'd say, you know, in sum,</p> <p>17 I'm -- I'm a methodologist interested in the use of</p> <p>18 evidence in the social sciences, and the</p> <p>19 implications on policy.</p> <p>20 Q Do you find, in your professional career,</p> <p>21 that a lot of social science, say prior to your</p> <p>22 engagement in the field, didn't or doesn't rely on</p>
<p style="text-align: right;">Page 15</p> <p>1 Q Okay. So as this report stands currently</p> <p>2 in Defendants' Exhibit 1, you stand by all the</p> <p>3 conclusions and opinions you issued in this report,</p> <p>4 fair?</p> <p>5 A Yes.</p> <p>6 Q What do you consider to be your field of</p> <p>7 expertise?</p> <p>8 A So I'm a social scientist by training.</p> <p>9 And my dissertation -- as long-standing interest,</p> <p>10 I'll say the methodological foundations of social</p> <p>11 science. So my dissertation examined the strengths</p> <p>12 and weaknesses of different methodological</p> <p>13 approaches, approaches and statistics, formal</p> <p>14 modeling. And I'd say the -- the one thing that</p> <p>15 has defined my scholarly arc has been thinking</p> <p>16 about how do we -- how do we do good public policy,</p> <p>17 think about social phenomenon in the most</p> <p>18 comprehensive and informative way, and how do we</p> <p>19 integrate data and analysis into those evaluations.</p> <p>20 And a concern, for me, can run two ways.</p> <p>21 I think there's a lot of bad social science; there</p> <p>22 is, there's a lot of ways in which -- you know,</p>	<p style="text-align: right;">Page 17</p> <p>1 data enough?</p> <p>2 A Oh, no, the question is not whether</p> <p>3 people rely on data enough. I think there's</p> <p>4 certainly some areas of public policy where</p> <p>5 historically we haven't had good data, and -- and</p> <p>6 there's many attempts to increase our data. And</p> <p>7 those are generally I think good developments. I</p> <p>8 think the -- the larger challenge for many social</p> <p>9 scientists is there's a desire to be scientific, a</p> <p>10 desire to use data, but it's actually very</p> <p>11 difficult to do that well.</p> <p>12 And so, you know, colleagues and I</p> <p>13 debate -- sometimes jokingly -- but I -- I -- in my</p> <p>14 own opinion, probably the majority of say published</p> <p>15 social science research.</p> <p>16 And so there's been these replication</p> <p>17 crises (sic) that you may know in the</p> <p>18 psychological sciences. Many findings, many</p> <p>19 experiments, many statistical conclusions we</p> <p>20 haven't been able to replicate.</p> <p>21 And I'd say this feeds into criticisms</p> <p>22 I've been concerned about or criticisms that I've</p>

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1 made for the last decade that there's a variety of
 2 statistical ways that people can reach conclusions
 3 they'd like to reach without really being rigorous
 4 in alternative explanations. I mean rigorous
 5 about, you know, different modeling approaches.
 6 And so to answer your question, I think
 7 in the social sciences, there's a lot of misuse of
 8 data. And that's my con -- my primary concern, is
 9 that, you know, how -- you know, what really is the
 10 most important data that bears on this question:
 11 How can we best reason with and about it.
 12 Q Are there areas that you found -- strike
 13 that.
 14 Have you found generally in the social
 15 science area that data is harder to come by than in
 16 other research areas because of the nature of --
 17 because of the natures of the questions studied in
 18 social sciences?
 19 A I -- you might have to rephrase that.
 20 Q Sure.
 21 A Are you saying -- and just as a time
 22 point, you're saying more recently has data --

Page 19

1 Q Yeah, more --
 2 A -- been known?
 3 Q -- recent.
 4 A Just to clarify, to make sure I
 5 understand the question, it's about whether data
 6 has become more or less difficult to obtain in
 7 certain areas of the social scientists?
 8 Q Let me ask you -- let me rephrase.
 9 Certainly in other fields, like the
 10 medical field --
 11 A Uh-huh.
 12 Q -- or other scientific fields, do you
 13 find that data is generally more available in those
 14 fields than in more generic social science-type
 15 fields?
 16 A It's a very hard question to answer in
 17 the abstract. You know, on the one hand -- so I
 18 have friends that study political psychology and
 19 they look at Twitter posts. And if you study
 20 Twitter, there are literally trillions of data
 21 points now you can use.
 22 So in some areas of the social sciences,

Page 20

1 because of digital technologies, there's been a
 2 wealth of data. In other areas of the social
 3 sciences -- I have friends that study lobbying and
 4 money in Congress. And what I hear from them is
 5 the way deals are actually done are not things that
 6 show up on campaign contribution disclosures.
 7 They're things that happen over dinners. And so
 8 that data is hard to get.
 9 So I -- I think it's very particular to
 10 the question you're asking, whether or not there's
 11 been a dearth or a -- a wealth of data. But I'd
 12 say social scientists have been thinking more in
 13 recent decades of how do you get data that's
 14 appropriate for the question you're asking.
 15 Q Are there areas or topics that you have
 16 studied in your career where data points are
 17 immeasurable, there is no data for certain reasons?
 18 A Sure. There's many questions you could
 19 ask where you begin by realizing if I really wanted
 20 to answer that question, there's certain data I
 21 want which I can't find publicly now. And then you
 22 think of other ways that -- sometimes you can

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1 approximate that data. And then sometimes you can
 2 get at it directly.
 3 But I mean to put a finer point on it, I
 4 mean there's the old joke about, you know, people
 5 only find their keys under the -- the lamp lights
 6 in the street. And I'd say many social scientists
 7 focus on the data at hand, when, in fact, I mean in
 8 trivial manner, arguably most of the questions we
 9 want to ask, we don't have great data for. And
 10 it's probably for good reason.
 11 Because a lot of -- you know, there's,
 12 you know, all sorts of things I'd like to study,
 13 which would mean a enormous -- a violation of, you
 14 know, person's privacy, person's, you know,
 15 personal life. And at the end of the day, you
 16 know, certain fields where that's highly recognized
 17 or -- you know, medicine and whatnot.
 18 And for social scientists, it's always
 19 the default, that, you know, sometimes if there's a
 20 very important public policy question, you look for
 21 creative ways to get data. But certainly the --
 22 the vast array of human affairs, you know, social

<p style="text-align: right;">Page 22</p> <p>1 scientists don't always have that luxury of being</p> <p>2 able to treat somebody like an experiment or petri</p> <p>3 dish --</p> <p>4 Q Right</p> <p>5 A -- or invade their lives to get whatever</p> <p>6 information they'd like.</p> <p>7 Q Have you ever conducted a study where you</p> <p>8 didn't have the data points you wanted so you</p> <p>9 theorized or had to theorize based on the data you</p> <p>10 did have?</p> <p>11 A So all studies involve theorizing. And I</p> <p>12 think it's -- you theorize sometimes with better</p> <p>13 evidence and data to support you, sometimes with</p> <p>14 less evidence.</p> <p>15 So I'd say a theory is a -- a theory is</p> <p>16 always there. You know, there's always a question</p> <p>17 of reasoning within the -- you know, best evidence</p> <p>18 you have, both theoretical inferences and</p> <p>19 speculations as well as, you know, data that may or</p> <p>20 may not, to some different degrees, be relevant to</p> <p>21 some underlying question.</p> <p>22 Q How many currently outstanding or</p>	<p style="text-align: right;">Page 24</p> <p>1 professor. It gets online into our site. And we</p> <p>2 can send it out to them on their behalf.</p> <p>3 I'm a member -- the Senate confirmed me</p> <p>4 this summer to serve on the National Endowment for</p> <p>5 Humanities. So we have three meetings a year for</p> <p>6 that. I think that's -- and then -- yeah, those</p> <p>7 would be the core professional --</p> <p>8 Q Sure.</p> <p>9 A -- activities that I engage in.</p> <p>10 Q What do you -- what do you teach as an</p> <p>11 assistant professor at Georgetown?</p> <p>12 A So we have an undergrad core course for</p> <p>13 our business MB -- or our business undergrad</p> <p>14 students. The title is now called Ethical Values</p> <p>15 of Business: Politics, Regulation, and Corporate</p> <p>16 Governance. And later this fall, in our second</p> <p>17 mod, I'll also be teaching an MBA course, for our</p> <p>18 second-year MBAs, on principal leadership.</p> <p>19 Q And the -- the first class you mentioned,</p> <p>20 not the -- not the MBA course --</p> <p>21 A Right</p> <p>22 Q -- the first class, is that for undergrad</p>
<p style="text-align: right;">Page 23</p> <p>1 incomplete -- incompleting research projects are you</p> <p>2 working on now, if you know?</p> <p>3 A Oh, well, I'll -- I'll interpret the term</p> <p>4 "projects" here widely. So, you know, there are</p> <p>5 things that I'd like to write some day, things that</p> <p>6 I have a paragraph on, there are things that are 90</p> <p>7 percent written. I'd say there's -- is at least a</p> <p>8 dozen papers that I'm working on that are in</p> <p>9 various degrees of completion, and at least two</p> <p>10 book projects that are in different degrees of</p> <p>11 completion.</p> <p>12 Q And do you -- other than your research</p> <p>13 work right now, do you have any other current jobs?</p> <p>14 A The -- so my -- my primary job, I'm a</p> <p>15 professor -- assistant professor at Georgetown</p> <p>16 University. The -- I run a very small business.</p> <p>17 Business is an exaggeration, because it doesn't</p> <p>18 really make money. But an online dossier service</p> <p>19 for academics.</p> <p>20 So that would -- so, for example, if</p> <p>21 somebody has confidential letters of</p> <p>22 recommendation, they can solicit that from the</p>	<p style="text-align: right;">Page 25</p> <p>1 students?</p> <p>2 A That is. Yes.</p> <p>3 Q Okay. And real generally --</p> <p>4 A Uh-huh.</p> <p>5 Q -- can you give me a few sentence, one</p> <p>6 sentence, three thousand foot flyover, as to what</p> <p>7 material you cover in that undergrad class?</p> <p>8 A Yeah, so --</p> <p>9 Q And I promise I won't provide this to</p> <p>10 your students to present --</p> <p>11 A Oh, I can --</p> <p>12 Q -- if there's any --</p> <p>13 A -- as -- I could give you 12 hours of the</p> <p>14 summary.</p> <p>15 Q Not looking for that.</p> <p>16 MR. CHUCK COOPER: Nor is counsel.</p> <p>17 MR. DAVIS COOPER: Nor counsel.</p> <p>18 THE WITNESS: So the course thinks about</p> <p>19 the relationship between economics and politics at</p> <p>20 the highest level. We consider problems of</p> <p>21 collective action, problems that occur within the</p> <p>22 firm, the problems that occur within the larger</p>

<p style="text-align: right;">Page 26</p> <p>1 society.</p> <p>2 So we examine a variety of corporate</p> <p>3 failures. We look at regulatory approaches to try</p> <p>4 to deal with that. We look at also issues within</p> <p>5 firms, how you motivate, manage, surveil people.</p> <p>6 We look at a variety of whistleblower programs,</p> <p>7 ways to try to increase ethical accountability. We</p> <p>8 deal some, near the end of the course, with</p> <p>9 contemporary policy debates, about the business and</p> <p>10 place in society, some questions of, you know, use</p> <p>11 of digital technology, use of data.</p> <p>12 So it's -- it's, generally speaking, I</p> <p>13 think of it as a business ethics course, but which</p> <p>14 cashes out in a variety of particular theoretical</p> <p>15 controversies and dilemmas in -- in economics and</p> <p>16 political science and -- and issues of regulation.</p> <p>17 Q And have you started teaching this</p> <p>18 semester --</p> <p>19 A I have --</p> <p>20 Q -- yet?</p> <p>21 A -- yes.</p> <p>22 Q Okay. Are you teaching mostly the</p>	<p style="text-align: right;">Page 28</p> <p>1 months into it. You know, there's obviously a</p> <p>2 controversy over the effect -- a long-standing</p> <p>3 controversy over the effect of concealed carry</p> <p>4 laws. And some -- a very interesting recent study</p> <p>5 came out which seems to me to have two glaring</p> <p>6 methodological problems. And I think this study</p> <p>7 will -- I mean it's an ambitious study, so it will</p> <p>8 get attention. And I'm very interested to see what</p> <p>9 it'll look like if you correct for these issues.</p> <p>10 Q Okay. You said you started that research</p> <p>11 project a few months ago?</p> <p>12 A Yeah, I'm gonna think of -- that's a -- I</p> <p>13 means that's -- it's a long standing interest.</p> <p>14 I've only been thinking about this for -- for ten</p> <p>15 years, but the -- I started that one probably six</p> <p>16 months ago or so that I actually, you know, on a</p> <p>17 systematic basis started looking, you know, and</p> <p>18 saying, well, how I might have approached -- on a</p> <p>19 systematic basis, I started asking how I might</p> <p>20 approach data gathering.</p> <p>21 Q Now, you said that is a long-standing</p> <p>22 interest, is that -- you just said that was a --</p>
<p style="text-align: right;">Page 27</p> <p>1 economics majors?</p> <p>2 A So they're actually business school --</p> <p>3 they -- our students will apply to the business</p> <p>4 school when they go to Georgetown. So they'll --</p> <p>5 they'll be business school students who might be</p> <p>6 majoring in a variety of finance, accounting,</p> <p>7 although we do allow students to enroll in the</p> <p>8 college, so I will have some government majors,</p> <p>9 some economic majors and that sort of thing.</p> <p>10 Q Any law taught in that course?</p> <p>11 A Yes. I mean we -- we go over a variety</p> <p>12 of, you know, regulatory -- well, a history of</p> <p>13 certain regulations. And we'll -- we'll read a --</p> <p>14 some cases, and so there -- there is some law</p> <p>15 taught.</p> <p>16 Q Okay. I want to turn back to your 12 or</p> <p>17 so outstanding research projects, for a little bit</p> <p>18 of follow-up questions.</p> <p>19 Are you currently researching the impact</p> <p>20 of firearms laws in the United States at all?</p> <p>21 A Yeah. One research project I just</p> <p>22 started -- well, I shouldn't say -- maybe a few</p>	<p style="text-align: right;">Page 29</p> <p>1 it's a --</p> <p>2 A Yeah --</p> <p>3 Q -- long-standing --</p> <p>4 A -- yeah.</p> <p>5 Q -- interest?</p> <p>6 Approximately ten years?</p> <p>7 A Yeah, that's probably right.</p> <p>8 Q And what do you mean by that? This</p> <p>9 particular concealed carry issue was a</p> <p>10 long-standing interest, or is it more generally?</p> <p>11 A I'd say more general. So there's a -- a</p> <p>12 guy at Harvard named Steven Pinker, who is a famous</p> <p>13 psychologist there. And he has a book. Came out a</p> <p>14 few years ago called -- I think it's "The Better</p> <p>15 Angels of our Nature." And he documents it in this</p> <p>16 huge secular -- by secular, I mean over time --</p> <p>17 decline in rates of violence in the modern world,</p> <p>18 roughly in the -- the last 400 years, but</p> <p>19 particularly since World -- the end of World War</p> <p>20 II.</p> <p>21 And so I'd say there's this ongoing</p> <p>22 debate in the social sciences, like have people</p>

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1 become less violent? Is it technology? Do we have
 2 more cameras? So what's responsible for it?
 3 Because -- I mean one part -- in Pinker's telling,
 4 he thinks this is --
 5 MR. DAVIS COOPER: You may want to slow
 6 the pace --
 7 THE WITNESS: Ah.
 8 MR. DAVIS COOPER: -- of your speaking
 9 down just --
 10 THE WITNESS: I'm sorry.
 11 MR. DAVIS COOPER: -- a bit.
 12 THE WITNESS: It got me excited.
 13 MR. DAVIS COOPER: She's gotta get every
 14 word you say and it's --
 15 THE WITNESS: Right.
 16 MR. DAVIS COOPER: -- pretty difficult,
 17 so --
 18 THE WITNESS: Yes.
 19 So the question is, what explains this.
 20 And Pinker identifies a variety of things. But in
 21 Pinker's telling, he thinks this is a -- a product
 22 of a variety of cultural forces and economic

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1 conditions that really were kind of. We can coast
 2 and things are gonna just increasingly get better.
 3 And I'd say critics of Pinker's say, well, maybe
 4 not; things could get more violent.
 5 And I thought even since the book's come
 6 out, I think that there's been, you know, a variety
 7 of things around the world -- terrorist attacks --
 8 that have made people question, you know, what are
 9 the sources of violence, what are the criminal
 10 technologies, the social conditions, the economic
 11 conditions.
 12 So I'd -- I'd this is a big question the
 13 social scientists, a lot of people, write about and
 14 think about. And, you know, the United States --
 15 you know, obviously this is a hot button issue to
 16 deal with all the Second Amendment stuff, but it
 17 strikes me as there are these, you know, historical
 18 debates. People are very partisan on every side
 19 about this.
 20 But if you could actually do really good,
 21 you know, really detailed data doing work on this,
 22 I think it could make a contribution, so --

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1 Q So your current work or study in the
 2 concealed carry is, this is kind of as an off-shoot
 3 of that larger question, potentially?
 4 A It is. And -- and just tangentially,
 5 it's -- it's also a project which I only want to be
 6 working on after I've received tenure, because of
 7 the potential -- you know, it's something which,
 8 you know, as you know, is a -- a thing in which
 9 some people find controversial to work on. People
 10 have partisan interest on it.
 11 So, you know, it -- it was -- you know,
 12 plenty of people kinda would say, you know, nod and
 13 wink, you don't work on something this
 14 controversial until you've got a tenure.
 15 So I -- I'm very much, you know, you
 16 might say, you know, kind of self-sensitive on that
 17 to say it's a long-standing interest, but I -- I
 18 can't really touch this until -- in a big way until
 19 I know I have like a protection for it. If
 20 somebody gets mad at it, I don't need to worry
 21 about it.
 22 Q Has anyone at Georgetown -- in the

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1 Georgetown administration expressed that opinion to
 2 you directly?
 3 A They don't know about my interests in
 4 that, so no, they haven't.
 5 Q Who funds that research project that
 6 you're working on?
 7 A So right now -- so -- so Georgetown
 8 itself provides us with a -- a research budget.
 9 And the -- at this point, the -- as far as the
 10 research I've done, has come out of my Georgetown
 11 budget, there -- I've mentioned this, however, to
 12 other people.
 13 And so there are -- like we had -- the
 14 last spring at Georgetown, I had -- two of my
 15 students in my fall class were research assistants
 16 for me, so -- and these are Georgetown-funded. So
 17 on -- you know, I would tell it -- at one point I
 18 told them I'd like to look up some of these
 19 numbers, you know, state by state in concealed
 20 carry. And we ran out of time, but had some of
 21 them do that.
 22 I had mentioned this summer to some other

<p style="text-align: right;">Page 34</p> <p>1 students, you know, I'm interested in looking at 2 this. And one of those students did begin to -- to 3 help me look up some of these numbers. But the -- 4 as far as my own research on this, it's entirely 5 Georgetown-funded. 6 Q Okay. What type of data -- what type of 7 data are you pulling with respect to the concealed 8 carry -- 9 A Oh, yeah. 10 Q -- issue at this point that -- 11 A Yes, it -- briefly, to give you the 12 overview of this. It -- the way a lot of people 13 have conceptualized the analysis of these laws is 14 you either have a state that's pro carry or anti 15 carry. So the way I think puts into, it's either a 16 zero or a one. 17 And one thing that struck me as odd is 18 when you actually look -- like a state like 19 Massachusetts, it's not a -- it's -- it's not a 20 shall carry state, so it has relative -- you know, 21 it's counted as a zero. But if you look at the 22 numbers, it's actually a remarkably high percentage</p>	<p style="text-align: right;">Page 36</p> <p>1 have these records available. Some of them have 2 now so-called -- well, open carry or permitless 3 carry. But there's also ways you can impute based 4 on states where you do have good data, good 5 estimates to those. 6 But the idea is to get state -- year by 7 year, state by state concealed carry numbers, which 8 will allow you to do just much more rigorous, 9 highly powered econometric inference on their 10 effects on crime, their effects on suicide, their 11 effects on all these sorts of things. 12 Q And just a brief follow-up, you had 13 mentioned there is a more recent study covering the 14 concealed carry that has, in your mind, too many 15 primary flaws. 16 Could -- 17 A Yeah. 18 Q -- you tell me what you believe those 19 primary flaws are? 20 And let me just add to that. 21 A Yeah. 22 Q I don't know your field, right. So are</p>
<p style="text-align: right;">Page 35</p> <p>1 of the population has concealed carry permits. 2 Because, you know, all the people in mid -- middle 3 Massachusetts, western Massachusetts, they're a -- 4 I -- I forget how it works in Massachusetts, but I 5 believe there's some local discretion by sheriffs 6 or something like that. 7 So I -- I'm not gonna remember the number 8 off the top of my head, but I wanna say something 9 like 6 or 8 percent of the population concealed 10 carry permits in Massachusetts. 11 And it occurred to me what would be a 12 more rigorous econometric setup is if you can go 13 state -- state by state and not only look at 14 numbers of permits or percentage of the population 15 with permits, but also look at over years how those 16 have changed. Because econometrically, you want 17 variation, is what helps you, you know, essentially 18 estimate how these changes might work on those 19 changes. 20 So the -- what I'd like to do at some 21 point is look at all the 50 states. And there's 22 probably with some of them -- some of them won't</p>	<p style="text-align: right;">Page 37</p> <p>1 there any proprietary interests in you testifying 2 about noncompleted research that you're concerned 3 about? Because if so, we can place this transcript 4 under some sort of -- that portion of the 5 transcript under confidentiality. 6 A None in that I'm -- 7 Q Okay. 8 A -- concerned about. 9 Q Fair enough. 10 A So I mean -- I mean the first -- the 11 first flaw, in my mind, is the -- the binary 12 coding, wherein it should be feasible to get these 13 numbers state by state. 14 And the -- and part of that -- and the 15 second flaw is how it -- so there's -- there's a -- 16 the -- a method he uses in this study that -- to 17 put it delicately, it -- it -- it -- it literally 18 involves making up data to look like -- so -- so 19 you have this question of you try to create 20 artificial control states that would mirror the 21 states you have data on. And so the -- the 22 approach is sometimes called synthetic control</p>

<p style="text-align: right;">Page 38</p> <p>1 analysis.</p> <p>2 Q Uh-huh.</p> <p>3 A And the problem is you're literally</p> <p>4 fabricating data. So you're saying, you know,</p> <p>5 suppose we have a date -- a -- a state that looked</p> <p>6 this much like Massachusetts, this much like New</p> <p>7 York, this much like California, this much like</p> <p>8 Maryland. We create this Frankenstein state, and</p> <p>9 then compare that on average to this state.</p> <p>10 It's -- it's made up data.</p> <p>11 Again, and there are -- there are</p> <p>12 circumstances where that's entirely appropriate</p> <p>13 because of limitations on data and the counter</p> <p>14 factials you're exploring.</p> <p>15 In my mind, what -- and part of the</p> <p>16 reasoning pursues that is because of this binary</p> <p>17 coding. You don't have that much variation. If</p> <p>18 you're able to get state by state, year by year,</p> <p>19 then you can do a variety of conduct -- econometric</p> <p>20 techniques, including one. It's sometimes called</p> <p>21 differences and differences, where you -- you know,</p> <p>22 you're able to tell by year difference changes,</p>	<p style="text-align: right;">Page 40</p> <p>1 And it had to do with from assault weapon, assault</p> <p>2 weapon bans, and mass shootings.</p> <p>3 And I was looking at -- into the paper.</p> <p>4 And -- and they had a statistic on the front page</p> <p>5 about -- I -- I'm paraphrasing -- something like 76</p> <p>6 percent of mass shootings are committed with</p> <p>7 assault rifles. And that struck me as really --</p> <p>8 I -- you know, I -- I know these numbers a little</p> <p>9 bit. And that couldn't be right.</p> <p>10 So I went and looked at their data. And</p> <p>11 I ended up emailing them. I said, Can I get your</p> <p>12 code? And it turns out they had mis-quoted in the</p> <p>13 datasets that they were -- they were, you know,</p> <p>14 counting numbers of a -- of assault weapons and --</p> <p>15 in fact, they used the term "semi-automatic" as one</p> <p>16 of their coding things, which meant every</p> <p>17 semi-automatic pistol in the entire dataset was</p> <p>18 counted as one of these.</p> <p>19 And so I think I may submit a little --</p> <p>20 it turns out when you code it right, there's also</p> <p>21 some interesting results. And I may write that up</p> <p>22 now.</p>
<p style="text-align: right;">Page 39</p> <p>1 both in the crime rates and the concealed carry</p> <p>2 rates.</p> <p>3 And you also have these big</p> <p>4 discontinuities. When a law is first passed, it</p> <p>5 allows this. And so I -- in my -- I -- I believe</p> <p>6 it's a much more rigorous econometric approach that</p> <p>7 you can employ at a methods level and then also</p> <p>8 this -- either flubbing the data itself.</p> <p>9 Q Thank you.</p> <p>10 Will this -- this project is -- in your</p> <p>11 mind, will it result in a scholarly paper or a</p> <p>12 book?</p> <p>13 A I hope a paper.</p> <p>14 Q Okay. Do you currently have any</p> <p>15 published writings, finalized research in the areas</p> <p>16 of gun control, gun laws, or the gun debate?</p> <p>17 A I have not published anything that --</p> <p>18 that primarily looks at that. There is -- there's</p> <p>19 at least one other project I -- I -- I was telling</p> <p>20 you when I was doing a lit review, I came across a</p> <p>21 recent study -- just came out last year -- by some</p> <p>22 people at NYU, in a surgery journal of all places.</p>	<p style="text-align: right;">Page 41</p> <p>1 Q Okay.</p> <p>2 A And so I have a draft of that. I haven't</p> <p>3 submitted that. And, again, I -- my hope and plan</p> <p>4 right now is really to not have any of this stuff,</p> <p>5 you know, out in the public until I'm post tenure</p> <p>6 review. And so that's been a part of the</p> <p>7 consideration.</p> <p>8 Q When is tenure review?</p> <p>9 A Oh, I'm prob -- probably two years away.</p> <p>10 Q Okay. And not to backtrack too far, but</p> <p>11 I just wanted to close the loop on --</p> <p>12 A Uh-huh.</p> <p>13 Q -- the concealed carry research.</p> <p>14 Who was the author of the article that</p> <p>15 you found two inherent flaws in?</p> <p>16 A Oh, John Donohue at Stanford. He might</p> <p>17 have co-authors, but I remember him --</p> <p>18 Q Okay.</p> <p>19 A -- as the first one on the paper.</p> <p>20 Q Okay. Thank you.</p> <p>21 MR. DAGUE: Mark this as "número dos."</p> <p>22 (Defendants' Deposition Exhibit No. 2</p>

<p>Page 42</p> <p>1 marked for identification.)</p> <p>2 BY MR. DAGUE:</p> <p>3 Q Dr. English, I've just handed you what</p> <p>4 has been marked for this deposition as Defendants'</p> <p>5 Exhibit 2.</p> <p>6 While you're reviewing that, I'm just</p> <p>7 going to, for the record, state this is a copy of</p> <p>8 what I believe to be Dr. English's CV provided to</p> <p>9 me by counsel during the discovery -- the expert</p> <p>10 discovery phase.</p> <p>11 Just ask you to take two seconds to</p> <p>12 review that. I'm not gonna ask you too much about</p> <p>13 it, but general questions about it.</p> <p>14 MR. DAGUE: And also, just note for the</p> <p>15 record -- my apologies -- the original sticker copy</p> <p>16 of this is not the one that we'll use for the</p> <p>17 original deposition. I've written on the original</p> <p>18 by accident. So if anyone's comparing this in the</p> <p>19 future, that bears a photocopied sticker of</p> <p>20 Defendants' Exhibit 2.</p> <p>21 BY MR. DAGUE:</p> <p>22 Q Dr. English, are you familiar with this</p>	<p>Page 44</p> <p>1 A Okay.</p> <p>2 Q Have you received any formal legal</p> <p>3 training in your educational background?</p> <p>4 A I don't have a JD. I was the head TA for</p> <p>5 a constitutional law course that we taught at Duke.</p> <p>6 There's a professor -- Erwin Chemerinsky -- that</p> <p>7 I'm told is a leading constitutional law scholar.</p> <p>8 So I meet with Erwin regularly, and, you know, sat</p> <p>9 through his courses, administered his exams, all</p> <p>10 his lectures.</p> <p>11 So, yeah, spent a lot of time thinking</p> <p>12 about constitutional law in the context of Erwin's</p> <p>13 instruction.</p> <p>14 Q Were you --</p> <p>15 A But --</p> <p>16 Q Sorry.</p> <p>17 A Yeah.</p> <p>18 Q Were you --</p> <p>19 A But I wasn't a -- I was not enrolled in</p> <p>20 the Duke JD program.</p> <p>21 Q Were you a TA then in your undergrad</p> <p>22 years?</p>
<p>Page 43</p> <p>1 document?</p> <p>2 A Yes.</p> <p>3 Q And what is this document?</p> <p>4 A This is my CV.</p> <p>5 Q And does this CV include an accurate</p> <p>6 description of your education?</p> <p>7 A Yes.</p> <p>8 Q And do you -- well, could you briefly</p> <p>9 summarize your education?</p> <p>10 A Sure. I was an undergrad at Duke</p> <p>11 University, got a BA in mathematics, a BS in the</p> <p>12 economics, graduated with distinction in economic</p> <p>13 (sic), wrote a thesis, went to Oxford, did a</p> <p>14 master's program in ethics, returned to Duke, did a</p> <p>15 MA and Ph.D. in political science.</p> <p>16 My two -- we had to pick subfields, so I</p> <p>17 did both -- what's sometimes called methodology,</p> <p>18 and political theory. And we had a sub</p> <p>19 concentration, political economy. Then got my Ph.D</p> <p>20 in 2010. And I can go through professional stuff,</p> <p>21 too, if you like.</p> <p>22 Q No, that's fine.</p>	<p>Page 45</p> <p>1 A No.</p> <p>2 Q That was in your --</p> <p>3 A This is in grad school.</p> <p>4 Q This is at --</p> <p>5 A It was --</p> <p>6 Q -- where Duke --</p> <p>7 A -- at the -- this was in grad school as a</p> <p>8 Ph.D. student.</p> <p>9 Q How long did you serve as Professor</p> <p>10 Chemerinsky's head TA?</p> <p>11 A I believe that was in the fall. Let's</p> <p>12 see. It might actually be here somewhere.</p> <p>13 (Witness looked at document). Yeah, it</p> <p>14 was spring of 2008.</p> <p>15 Q Okay. And that was -- well, what class</p> <p>16 was that? Do you remember the title of the class?</p> <p>17 A Yeah, we called it, Liberty, Equality,</p> <p>18 and the American Constitution.</p> <p>19 Q Was it a first-year of constitutional law</p> <p>20 class, or an upper level common law class?</p> <p>21 A The -- so it was not a -- it was taught</p> <p>22 jointly with the political science department, so</p>

<p style="text-align: right;">Page 46</p> <p>1 it was a -- a class that was made available to</p> <p>2 undergrads. We had some grad students who would</p> <p>3 take it.</p> <p>4 Q So this was not a class in law school,</p> <p>5 this was in the -- this was affiliated with the</p> <p>6 poli-sci department?</p> <p>7 A Right. We actually used the same text</p> <p>8 and syllabus, but --</p> <p>9 Q And was -- at the time, was Professor</p> <p>10 Chemerinsky a law professor?</p> <p>11 A He was, right.</p> <p>12 Q Would you say that that work as a TA with</p> <p>13 Professor Chemerinsky in that class is your only</p> <p>14 exposure to legal training?</p> <p>15 A It depends exactly what you mean by legal</p> <p>16 training. The -- so, you know, I -- I'm a -- a</p> <p>17 political scientist by training. We obviously</p> <p>18 spend a lot of time thinking about the history of</p> <p>19 American political thought, about -- debates around</p> <p>20 the constitution about the origins of judicial</p> <p>21 review.</p> <p>22 Again, that's -- these are what I'd</p>	<p style="text-align: right;">Page 48</p> <p>1 A -- with regard to constitutional debates,</p> <p>2 both at their founding and as well as some of their</p> <p>3 history and development.</p> <p>4 Q Right. But do you hold yourself out as</p> <p>5 an expert for hire in issues of constitutional law?</p> <p>6 A I don't really hold myself out for an</p> <p>7 expert in hire in -- I -- I -- and since I don't</p> <p>8 have any website advertising the -- you know,</p> <p>9 anything like that, the -- I would think it --</p> <p>10 well, no, I've never advertised myself as a</p> <p>11 constitutional law expert.</p> <p>12 Q Do you consider yourself qualified as an</p> <p>13 expert to opine upon issues of constitutional law?</p> <p>14 A I do think I'm qualified to opine about</p> <p>15 issues of let's say constitutional reasoning.</p> <p>16 And I mean some sense, you know, you</p> <p>17 know, the con -- you know I was just at these -- I</p> <p>18 was just at this confirmation two days ago where we</p> <p>19 had a very eloquent speech by the director of the</p> <p>20 National Endowment for the Humanities, calling, as</p> <p>21 part of their founding documents, you know, the</p> <p>22 Constitution is the heritage of everyone in the</p>
<p style="text-align: right;">Page 47</p> <p>1 say -- you know, courses that are -- and ideas</p> <p>2 foundational for law. I -- I had not taken the</p> <p>3 standard contracts course or the -- I -- I think a</p> <p>4 lot of technical minutia at Harvard. I spent five</p> <p>5 years at Harvard's ethics center. And we were</p> <p>6 actually located administratively under the law</p> <p>7 school.</p> <p>8 So my boss is a guy named Larry Lessing,</p> <p>9 who -- and the -- I was actually technically a</p> <p>10 lecturer at Harvard Law School when I co-taught a</p> <p>11 course with Larry. And there were -- you know,</p> <p>12 I -- I think I would do a variety of activities,</p> <p>13 but the Harvard Law School, and some seminars and</p> <p>14 stuff like that.</p> <p>15 But the -- this -- I would not consider</p> <p>16 myself a lawyer. And -- and I'm sure there's many</p> <p>17 minutia areas of the law that you would not want me</p> <p>18 doing your housing contract.</p> <p>19 Q Do you consider yourself an expert in</p> <p>20 constitutional law?</p> <p>21 A I'd consider myself informed --</p> <p>22 Q Uh-huh.</p>	<p style="text-align: right;">Page 49</p> <p>1 United States.</p> <p>2 And, you know, as somebody who spent much</p> <p>3 of his certainly graduate career in dealing with</p> <p>4 history of the American political development, I --</p> <p>5 I -- I would say I'm informed enough about the</p> <p>6 Constitution to at least reflect on its, you know,</p> <p>7 principles and its -- its relationship to a variety</p> <p>8 of American -- both, you know, legal and political</p> <p>9 debates.</p> <p>10 Q But just to be clear, you testified that</p> <p>11 you've never taken a formal law class, I think you</p> <p>12 said in contracts.</p> <p>13 Have you ever taken a formal law class in</p> <p>14 basics of constitutional law?</p> <p>15 A I've only been a TA. I haven't been a</p> <p>16 student in it.</p> <p>17 Q Okay. I asked you about whether you</p> <p>18 consider yourself an expert in constitutional law.</p> <p>19 And you said you'd consider yourself to be an</p> <p>20 expert in constitutional reasoning.</p> <p>21 Could you articulate that distinction --</p> <p>22 A Yeah.</p>

<p style="text-align: right;">Page 50</p> <p>1 Q -- for me a little bit better?</p> <p>2 A Sure. So -- so at Harvard -- Harvard has</p> <p>3 a program in constitutional government, run by</p> <p>4 Harvey Mansfield there. And the -- it is, I would</p> <p>5 say, one of the major sub area -- one of the major</p> <p>6 sub fields of American politics, which is one of</p> <p>7 the four main sub fields of political science, is</p> <p>8 what's sometimes called American political</p> <p>9 development and constitutional studies. And that</p> <p>10 has been a major interest of mine.</p> <p>11 And -- and it's a question of -- first,</p> <p>12 as a political question, which are what are the</p> <p>13 aims of the Constitution and it's, you know,</p> <p>14 founding configuration and the ideals that animated</p> <p>15 it, what were the nuances administratively that it</p> <p>16 set up in how government should function and work.</p> <p>17 There's also a history to how it developed, how did</p> <p>18 our -- we get our amendments, what was the impacts</p> <p>19 of different amendments, how those've been</p> <p>20 interpreted.</p> <p>21 So these matters of -- of both</p> <p>22 theoretical reasoning and argument, these matters</p>	<p style="text-align: right;">Page 52</p> <p>1 Q So just to delve a little bit deeper into</p> <p>2 that. The last thing you said is there are some</p> <p>3 subparts of constitutional law that certainly you</p> <p>4 don't consider yourself to be educated or an expert</p> <p>5 in; is that fair, a fair character --</p> <p>6 A I didn't say educated. I said an ex --</p> <p>7 I -- there are issues on -- you know, there are --</p> <p>8 I'd say issues on Fourth and Fifth Amendment</p> <p>9 questions that I know are extremely complex, legal</p> <p>10 histories behind them. And, you know, there are</p> <p>11 other people I would refer you to if you wanted</p> <p>12 a -- a thoughtful opinion on that. There's a --</p> <p>13 other areas that I think have been pretty central</p> <p>14 to my interests.</p> <p>15 Q Is it fair to say that you have more of a</p> <p>16 generalized policy knowledge of the Constitution,</p> <p>17 but if you delve into perhaps the nitty-gritty of</p> <p>18 what is taught in a constitutional law class,</p> <p>19 that's where you may not have as much familiarity?</p> <p>20 And I am happy to --</p> <p>21 A That --</p> <p>22 Q -- give you an example, if it makes it</p>
<p style="text-align: right;">Page 51</p> <p>1 of -- of history and development, are certainly</p> <p>2 within the wheelhouse of political science.</p> <p>3 They're certainly things that myself and -- and my</p> <p>4 teachers have been very interested in. And I'm</p> <p>5 aware there's -- there's plenty of practitioners</p> <p>6 in, you know, legal fields that have a variety of</p> <p>7 sub interests and expertise and -- and bill for</p> <p>8 that, depending on those levels of expertise.</p> <p>9 My interests in the Constitution have</p> <p>10 always been, I'd say, scholarly interest, interest</p> <p>11 in their principles, interest in their</p> <p>12 implications, interest in their -- in the relevance</p> <p>13 to policy. So I'm sure there's some sub areas of</p> <p>14 constitutional law and interpretation that -- that</p> <p>15 I would not be qualified to think about. But there</p> <p>16 are many that -- that actually are -- are very, you</p> <p>17 know, serious and long-standing interest to me.</p> <p>18 MR. DAGUE: Just off the record for a</p> <p>19 second.</p> <p>20 (Discussion off the record)</p> <p>21 MR. DAGUE: Back on the record.</p> <p>22 BY MR. DAGUE:</p>	<p style="text-align: right;">Page 53</p> <p>1 easier to answer.</p> <p>2 A Sure. Why don't you give an example?</p> <p>3 Q Okay. So if -- if I were to ask you</p> <p>4 whether you consider yourself an expert in the</p> <p>5 levels of scrutiny that the Supreme Court has</p> <p>6 applied to various fundamental rights, would that</p> <p>7 be something you could -- you know and are</p> <p>8 comfortable with?</p> <p>9 A Yeah, I had to teach that --</p> <p>10 Q Okay.</p> <p>11 A -- for Chemerinsky all the time.</p> <p>12 Q Okay. So --</p> <p>13 A Umm --</p> <p>14 Q Sorry. Don't mean to cut you off --</p> <p>15 A Yes.</p> <p>16 Q -- on that. Go ahead.</p> <p>17 A So -- so that -- but I'm -- there have --</p> <p>18 I'm sure there's -- the more I learn about any</p> <p>19 academic field is the more proliferation of sub</p> <p>20 fields and sub areas. And so something like levels</p> <p>21 of judicial review, yeah, that's standard stuff.</p> <p>22 Q Okay.</p>

<p style="text-align: right;">Page 54</p> <p>1 A But I -- I'm -- I'm -- I'm sure there are</p> <p>2 some subspecialties, some areas, that I'm not an</p> <p>3 expert in.</p> <p>4 Q Fair enough.</p> <p>5 Are there any other types of law other</p> <p>6 than constitutional law that you consider yourself</p> <p>7 to have the same level of expertise in as</p> <p>8 constitutional?</p> <p>9 A No, although I studied a lot of D.C.</p> <p>10 permitting process, but --</p> <p>11 Q Do you regularly conduct legal research</p> <p>12 as part of your professional scholarly research</p> <p>13 work?</p> <p>14 A I -- I collaborated with Larry Lessing on</p> <p>15 some projects that might touch on legal research.</p> <p>16 But now, no, there's no longer, you know --</p> <p>17 Q Have you ever formerly opined on any</p> <p>18 scholarly work or in a capacity as an expert as to</p> <p>19 the constitutionality of a law or regulation?</p> <p>20 A Not in detail.</p> <p>21 Q Would you consider that type of an</p> <p>22 opinion to be within your field or degree or area</p>	<p style="text-align: right;">Page 56</p> <p>1 know, currently have inherited on some of these</p> <p>2 issues.</p> <p>3 Q And just let me dig a little bit deeper</p> <p>4 on that.</p> <p>5 Would that be -- would that constitute</p> <p>6 case law research or general kind of Google</p> <p>7 searching for more general concepts of the law,</p> <p>8 status of the law?</p> <p>9 A Yeah, I didn't crack open my old case law</p> <p>10 book with -- that Erwin had given me, but the --</p> <p>11 I'd say, you know, Google may -- may make light of</p> <p>12 it, but you can -- you can read -- actually access</p> <p>13 quite a bit on Google these days.</p> <p>14 So yes, I -- I looked into -- and I think</p> <p>15 I even cite, you know, this -- this important</p> <p>16 decision from the '70s, thinking about the -- also</p> <p>17 these issues of how -- how can groups be suspected</p> <p>18 or scrutinized, be singled out as a group, which,</p> <p>19 you know, relates a little to the privacy but also</p> <p>20 it relates to all sort of issues of, you know,</p> <p>21 people's prerogatives against -- under search and</p> <p>22 seizure.</p>
<p style="text-align: right;">Page 55</p> <p>1 of expertise?</p> <p>2 A I certainly think someone who has a Ph.D</p> <p>3 in political science who has, you know, studied and</p> <p>4 thought deeply about the Constitution, its origins,</p> <p>5 its history, its development, could opine with some</p> <p>6 expertise and knowledge about certain areas.</p> <p>7 Q As part of your preparation for issuance</p> <p>8 of the expert report in this case --</p> <p>9 A Uh-huh.</p> <p>10 Q -- Defendants' Exhibit 1, did you conduct</p> <p>11 any legal research into the subject areas that you</p> <p>12 opined upon in this case?</p> <p>13 A Yeah, so I -- I went back and, you know,</p> <p>14 on the issues of scrutiny, you know, wanted to</p> <p>15 think about how this stuff has been looked at in</p> <p>16 the past, certainly issues of privacy also, the --</p> <p>17 there's always the hot social debates in some forms</p> <p>18 these days.</p> <p>19 But, yeah, I -- I did spend some time</p> <p>20 looking up some of the more recent history of some</p> <p>21 of the cases and decisions that had guided just</p> <p>22 the -- the standards which seem -- we seem to, you</p>	<p style="text-align: right;">Page 57</p> <p>1 And so, yeah, I -- I -- in the scholarly</p> <p>2 manner that I would for a lot of other research, I</p> <p>3 went online and made -- and -- and tried to make</p> <p>4 sure I was informed of some of the -- the latest --</p> <p>5 Q Sure.</p> <p>6 A -- developments and arguments in these</p> <p>7 areas.</p> <p>8 Q Did you conduct Lexus or Westlaw-type</p> <p>9 searches for this project?</p> <p>10 A There were a -- just two or three</p> <p>11 Lexus-Nexus-type searches, yeah.</p> <p>12 Q Now, you said a minute ago -- I just want</p> <p>13 to circle back.</p> <p>14 MR. DAGUE: And, Barbara, I promise we're</p> <p>15 getting towards a break.</p> <p>16 BY MR. DAGUE:</p> <p>17 Q Did you conduct the Lexus or Westlaw</p> <p>18 searches, or was that done by a TA or someone else?</p> <p>19 A The -- I -- at one point, there was a --</p> <p>20 I had a -- a research assistant, an undergrad</p> <p>21 actually, that helped me look up some of the --</p> <p>22 some of the historical cases.</p>

<p style="text-align: right;">Page 58</p> <p>1 But the -- yeah, at least -- and I can</p> <p>2 think of at least two occasions where I tried to</p> <p>3 search at my house. But I couldn't get in because</p> <p>4 I wasn't on -- I -- I wasn't on the -- the virtual</p> <p>5 private network, so I had to go back to campus to</p> <p>6 complete my search so I could actually view.</p> <p>7 Q So that research system helped you on</p> <p>8 this project?</p> <p>9 A It actually -- it -- it wasn't in the</p> <p>10 context of this -- I -- I hadn't brought the</p> <p>11 research assistant on for this project. It was</p> <p>12 somebody who had access to a library at one point.</p> <p>13 Q You did mention at one point that -- a</p> <p>14 few minutes ago that you have some expertise or at</p> <p>15 least have studied the D.C. permitting process.</p> <p>16 A Yeah.</p> <p>17 Q Is that -- is that what you testified to?</p> <p>18 A Yeah, that -- that was said somewhat in</p> <p>19 gist about areas of legal expertise. I -- I have</p> <p>20 spent an inordinate amount of time -- I had</p> <p>21 somebody come -- just look -- just small</p> <p>22 construction projects on my house, so -- I -- I</p>	<p style="text-align: right;">Page 60</p> <p>1 important people have often been wrong about</p> <p>2 things.</p> <p>3 And so I've always thought of myself as</p> <p>4 somebody who wants to bring, you know, the most</p> <p>5 rigorous arguments, do the most background</p> <p>6 research, and be part of a conversation. I would</p> <p>7 say I have a -- an interest in Second Amendment</p> <p>8 law. And I've read a lot about it. I thought</p> <p>9 about it in the context of Erwin Chemerinsky's</p> <p>10 course a few years ago. It's an area of interest.</p> <p>11 I don't know if -- if you -- if people</p> <p>12 give out licenses to be experts in the Second</p> <p>13 Amendment law. I'm certain there are people who</p> <p>14 are more expert than I am who, you know, are -- are</p> <p>15 more familiar with the -- the case law development,</p> <p>16 its background, but it's certainly an area that I</p> <p>17 have, I'd say, a -- a both interest and extensive</p> <p>18 reading and familiarity with.</p> <p>19 Q Okay. And I may have asked you this in</p> <p>20 different terms, but have you ever been retained as</p> <p>21 an expert or to provide an expert-type opinion,</p> <p>22 other than this case, on the Second Amendment or an</p>
<p style="text-align: right;">Page 59</p> <p>1 meant that partially in gist.</p> <p>2 Q Okay. So -- okay.</p> <p>3 A Yeah. And by permitting there, I meant</p> <p>4 construction permits.</p> <p>5 Q Construction permit, yes. I just wanted</p> <p>6 to follow up.</p> <p>7 MS. CONNELL: Much more complex.</p> <p>8 THE WITNESS: Yeah. Yeah.</p> <p>9 BY MR. DAGUE:</p> <p>10 Q Do you consider yourself to be an expert</p> <p>11 in Second Amendment law specifically?</p> <p>12 I know I asked you about constitutional</p> <p>13 generally. I want to just hone in on Second</p> <p>14 Amendment.</p> <p>15 MR. DAGUE: And Barbara, I promise we're</p> <p>16 getting towards a break.</p> <p>17 THE WITNESS: So I may have to ask you to</p> <p>18 define your meaning of expert. And I'll -- I'll</p> <p>19 just preface this by saying part of my interest in</p> <p>20 social science has been a skepticism, at least</p> <p>21 within Ph.D. social scientists, of various claims</p> <p>22 to expertise where, you know, very informed,</p>	<p style="text-align: right;">Page 61</p> <p>1 issue that abuts the Second Amendment?</p> <p>2 A So I have -- I have not been retained</p> <p>3 specifically to be a -- a Second Amendment expert.</p> <p>4 I have, however, offered expert witness in cases I</p> <p>5 think that deal with issues related to the Second</p> <p>6 Amendment.</p> <p>7 Q All right. That's a good stopping point.</p> <p>8 We'll get into that.</p> <p>9 MR. DAGUE: Five, ten minutes.</p> <p>10 (Recess)</p> <p>11 MR. DAGUE: Back on the record.</p> <p>12 BY MR. DAGUE:</p> <p>13 Q All right, Dr. English, we ended the --</p> <p>14 right before our last break, we started talking</p> <p>15 about prior expert service. And I'd asked you</p> <p>16 about prior expert service into Second Amendment --</p> <p>17 cases involving the Second Amendment.</p> <p>18 And I believe you testified that you do</p> <p>19 have some prior expert -- or expert testimony in</p> <p>20 those fields, although not directly related to the</p> <p>21 Second Amendment; ask that fair?</p> <p>22 A That is correct. What I was asked to</p>

<p style="text-align: right;">Page 62</p> <p>1 opine on was not specifically a legal question. It</p> <p>2 was, I'd say, data questions.</p> <p>3 Q Okay. And was one of those matters a</p> <p>4 California case recalled Rupp versus Becerra?</p> <p>5 A That is correct.</p> <p>6 Q And did you serve as a paid expert in</p> <p>7 Rupp versus Becerra?</p> <p>8 A No.</p> <p>9 Q No? Did you serve as an expert?</p> <p>10 A I did, yes.</p> <p>11 Q And were you not paid?</p> <p>12 A That's correct.</p> <p>13 Q That was a volunteer pro bono expert?</p> <p>14 A Yeah, so my -- I had been nominated for</p> <p>15 this position which required Senate confirmation.</p> <p>16 And there's a very extensive, elaborate financial</p> <p>17 disclosure process. And I turned in my forms. And</p> <p>18 at that point, would require getting them back from</p> <p>19 the Senate committees. And it would have set</p> <p>20 things back six months.</p> <p>21 So the -- the question in that case was</p> <p>22 actually a very -- a very narrow and specific one</p>	<p style="text-align: right;">Page 64</p> <p>1 gun advocacy organizations?</p> <p>2 A I don't recall. I -- I don't recall.</p> <p>3 Q In that case, were you contacted by</p> <p>4 counsel to serve -- a counsel to serve as an</p> <p>5 expert, or were you contacted by an organization?</p> <p>6 A I was contacted by counsel.</p> <p>7 Q And it was not counsel -- either of the</p> <p>8 Coopers, correct?</p> <p>9 A It was not either of the Coopers.</p> <p>10 Q Was it -- well, who was the counsel, if</p> <p>11 you recall?</p> <p>12 A I believe it was a counsel in California</p> <p>13 that had reached out to me.</p> <p>14 Q I know you didn't charge for that, is</p> <p>15 that right?</p> <p>16 A That's correct.</p> <p>17 Q But did you keep any records as to how</p> <p>18 much work you did on that, even though you weren't</p> <p>19 charging?</p> <p>20 A I did not keep close records on that.</p> <p>21 Q Can you estimate how much time you spent</p> <p>22 on that matter?</p>
<p style="text-align: right;">Page 63</p> <p>1 that -- it struck me as not something that would</p> <p>2 take a lot of time and effort. And so that one, I</p> <p>3 did not receive, even ask -- even ask for payment,</p> <p>4 because of the restrictions I had on having any</p> <p>5 undisclosed financial.</p> <p>6 Q What was the narrow question, if you</p> <p>7 recall, in that case?</p> <p>8 A The narrow question was estimating the</p> <p>9 number of AR-15 rifles that had been produced and</p> <p>10 sold in recent years.</p> <p>11 Q And who -- which side of that case did</p> <p>12 you serve as an expert on for?</p> <p>13 A Right. So it was the side challenging</p> <p>14 the state's ban on these weapons.</p> <p>15 Q Do you remember, was it an entity or an</p> <p>16 individual who was challenging the state's ban on</p> <p>17 those types of weapons?</p> <p>18 A I -- I don't fully remember. I believe</p> <p>19 it was a variety. I think it was a number of</p> <p>20 plaintiffs.</p> <p>21 Q And were any of those plaintiffs that</p> <p>22 you -- if you recall, were any of those plaintiffs</p>	<p style="text-align: right;">Page 65</p> <p>1 A Probably 80 hours or so.</p> <p>2 Q And can you estimate how much you would</p> <p>3 have charged for those services had you charged?</p> <p>4 A Oh, so I believe -- this is the first</p> <p>5 time -- this is the first time I had ever been</p> <p>6 contacted for a case, so I -- the -- the next --</p> <p>7 maybe charged \$250 an hour, so I guess you can do</p> <p>8 the math on that.</p> <p>9 Q Sure.</p> <p>10 Did you issue a report in that case?</p> <p>11 A I did.</p> <p>12 Q And was it styled as an expert report?</p> <p>13 A It was an expert report.</p> <p>14 Q Did you testify in a deposition in that</p> <p>15 case?</p> <p>16 A I did.</p> <p>17 Q And did you ever have to testify in open</p> <p>18 court in that case?</p> <p>19 A No.</p> <p>20 Q Do you know the status of that case</p> <p>21 currently?</p> <p>22 A I don't.</p>

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1 Q Do you know if the case is closed?

2 Has anyone contacted you to let you know

3 that your services are done?

4 A I don't believe I've been contacted.

5 Q What was your research task in that case,

6 if you can summarize it?

7 A Specifically to estimate the number of

8 AR-15-styled rifles in circulation and, you know,

9 using a variety of data sources to try to just get

10 some handle of, you know, what a -- I guess these

11 are at stake in the case. They want to know how

12 many of things are there.

13 Q And was it just how many there are in

14 California, or nationwide?

15 A It was nationwide.

16 Q And was there available data points that

17 you relied upon in your conclusion?

18 A Yeah, so there's -- there's both the

19 AMFER -- the American Manufacturer of Firearms

20 Report, AMFR, that the BATF collects. And those

21 have a variety of, you know year by year, company

22 by company, how many pistols, how many rifles,

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1 either re -- there's some estimation might still

2 need be done on sub types.

3 There also -- some market research had

4 been done by independent people. There's a variety

5 of survey things, ask people how many they own of

6 these. So there are a variety of data sources that

7 you could use to triangulate that and a few

8 different means.

9 Q And did you find the available data

10 compelling?

11 A What -- what do you mean by compelling?

12 Q Did you find it developed enough to base

13 an opinion upon?

14 A Yeah, so the -- you know, in -- in the

15 social sciences, we often think of, you know, what

16 are your margins of error or what are your, you

17 know, degrees of uncertainty.

18 And what gave me some confidence is that

19 using many of these different sources, they were

20 all producing numbers that were broadly consistent

21 with one another.

22 Q Uh-huh.

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1 A So, you know, estimates had to be -- had

2 to -- had to, you know, be made on a few of those.

3 But, yeah, the -- I was pretty confident in the

4 conclusions I came to.

5 Q Did you have to extrapolate from the data

6 to come to a conclusion?

7 A You might be -- some -- so extrapolation

8 can have a very technical meaning. That -- that

9 may not be the right term to use here.

10 Q Okay.

11 A I would say there -- you know, there

12 were -- I -- and what was nice about the

13 manufacturing data -- and you -- you -- you could

14 sometimes have either lower bounds or higher

15 bounds. So in all of the -- what I did there, I

16 tried to make the most conservative -- which is an

17 underestimate -- and there -- you know, I -- it's

18 possible there seems to be more than I -- I

19 estimated in that.

20 But the -- I was -- yeah, I'd say fairly

21 confident that it's gonna be in -- you know, within

22 the range -- within the, you know, ranges. I'd say

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1 yes in that. And I'd be -- I'd be very, very, very

2 surprised if it was below -- significantly below

3 what I concluded.

4 Q Okay. So -- and, yeah, forgive me for

5 maybe not using the right technical terms.

6 But in that case, you had some data

7 points, but you didn't have a final -- there's no

8 final number of these, so you had to -- you had to

9 estimate, based on the data points you had, and you

10 came up with an estimate; is that right?

11 A Yes. And to be clear, the -- I mean I'm

12 trying to think of what you might need to compare

13 that to.

14 I -- I guess the only way to know this

15 number is to get every American in the United

16 States who own one of these things or multiple of

17 these things to, you know, verify publicly under

18 oath that they -- this is how many they own. So

19 I -- I don't have that, I suppose.

20 Q Right.

21 So the -- in that case, the actual number

22 of AR-15-style weapons, is un -- is immeasurable,

<p style="text-align: right;">Page 70</p> <p>1 fair?</p> <p>2 The actual hard number is immeasurable,</p> <p>3 would require some estimation, right?</p> <p>4 A I would not use the term "immeasurable."</p> <p>5 Q Okay.</p> <p>6 A Because that -- so there -- there's --</p> <p>7 there's a few distinctions you could make. So</p> <p>8 there's a classic distinction, say, in econometrics</p> <p>9 between risk and uncertainty, risk being</p> <p>10 something -- you know, we know there's a 60 percent</p> <p>11 chance this is going to happen. And you can use</p> <p>12 that information. It doesn't mean it's gonna</p> <p>13 happen, but you're able to estimate. Whereas</p> <p>14 uncertainty is you have no idea what the percentage</p> <p>15 is at all.</p> <p>16 And so I -- we're definitely not in a</p> <p>17 position here of uncertainty. It's not -- now, the</p> <p>18 deal is, yes, we're dealing with -- with estimates,</p> <p>19 but they're estimates that are pretty tightly</p> <p>20 bounded, estimates that there's very good evidence</p> <p>21 for. And this is a case of literally everything in</p> <p>22 the social sciences we deal with: Everything is an</p>	<p style="text-align: right;">Page 72</p> <p>1 A That was this summer.</p> <p>2 Q This summer of 2019, or --</p> <p>3 A Yes, this summer of 2019.</p> <p>4 Q Okay. And can you -- do you remember the</p> <p>5 name of that case?</p> <p>6 A I don't.</p> <p>7 Q Do you remember who retained you?</p> <p>8 A It was Cooper & Kirk.</p> <p>9 Q Okay. Chuck and Davis?</p> <p>10 A No. It was actually Pete.</p> <p>11 Q Okay. Another lawyer with the firm?</p> <p>12 A Another lawyer with the firm.</p> <p>13 Q And do you remember, were you paid for</p> <p>14 that --</p> <p>15 A I was --</p> <p>16 Q -- engagement?</p> <p>17 A -- paid for that. I'd been -- I -- I'd</p> <p>18 been cleared by that point.</p> <p>19 MR. CHUCK COOPER: And just, Counsel, to</p> <p>20 complete the record, it's Pete Patterson, our</p> <p>21 partner here at the firm.</p> <p>22 MR. DAGUE: Thank you.</p>
<p style="text-align: right;">Page 71</p> <p>1 estimate.</p> <p>2 Q Right.</p> <p>3 A Everything.</p> <p>4 Q Right. Because in that case, short of</p> <p>5 conducting a personalized census of every American</p> <p>6 in the country that was reliable, certainly you</p> <p>7 could not come up with a -- and even that might not</p> <p>8 be reliable, but --</p> <p>9 A Even our census is based on a variety of</p> <p>10 inferential --</p> <p>11 Q Right.</p> <p>12 A -- conclusions.</p> <p>13 Q So short of going to everyone's home,</p> <p>14 knocking on the door, completing a complete search</p> <p>15 of their home, you need to estimate in that case;</p> <p>16 is that fair?</p> <p>17 A Yes.</p> <p>18 Q Okay. Now, did you serve as an expert</p> <p>19 witness in another case involving firearms in</p> <p>20 Vermont?</p> <p>21 A Yes.</p> <p>22 Q Okay. When was that?</p>	<p style="text-align: right;">Page 73</p> <p>1 BY MR. DAGUE:</p> <p>2 Q And do you recall the issue that you were</p> <p>3 asked to opine on as an expert in the Vermont case?</p> <p>4 A Yes. It was to understand the commonalty</p> <p>5 of ownership of magazines that had been recently</p> <p>6 banned in a -- by a Vermont law. And this law</p> <p>7 permitted magazines to continue to be owned that</p> <p>8 had been purchased before the date that the law</p> <p>9 went into effect.</p> <p>10 And the -- what I was asked to do in this</p> <p>11 case was to estimate how many people in Vermont own</p> <p>12 these. And there's a broader question: Are these</p> <p>13 commonly owned; and how common are they?</p> <p>14 Q Yeah, and maybe I am just not</p> <p>15 understanding.</p> <p>16 And when you say the commonality of</p> <p>17 ownership, does that mean you were asked to est --</p> <p>18 to explore the commonality between owners, or how</p> <p>19 common ownership was?</p> <p>20 A So how common ownership was, because</p> <p>21 that -- you know, you -- you want to both estimate</p> <p>22 how many of these things are owned, but, you know,</p>

<p style="text-align: right;">Page 74</p> <p>1 is -- is it a million owned by one person, or is</p> <p>2 it, you know, owned by this percent of the</p> <p>3 population. And -- and so I was trying -- the</p> <p>4 distribution of ownership as well as not always</p> <p>5 just how many are in circulation.</p> <p>6 Q Do you remember who -- well, do you</p> <p>7 remember if you served as an expert on behalf of</p> <p>8 the plaintiff or the defendant in that matter?</p> <p>9 A Right. So this was a -- the people</p> <p>10 challenging the law in Vermont.</p> <p>11 Q Okay. And do you remember what the</p> <p>12 Vermont law being challenged dictated?</p> <p>13 A Yeah. So, in brief, it -- it allowed</p> <p>14 prior ownership, but banned the sale of magazines</p> <p>15 that -- for pistols, I believe it was 15 or above,</p> <p>16 or maybe -- maybe above 15; and rifles, it was</p> <p>17 above 10.</p> <p>18 Q When you say above, you mean the number</p> <p>19 of --</p> <p>20 A Number of --</p> <p>21 Q -- rounds?</p> <p>22 A -- rounds, yes.</p>	<p style="text-align: right;">Page 76</p> <p>1 Q Did you issue a report in that case?</p> <p>2 A Yes.</p> <p>3 Q Okay. Did you testify in a deposition in</p> <p>4 that case?</p> <p>5 A No.</p> <p>6 Q Do you know if -- did you testify in</p> <p>7 court in that case?</p> <p>8 A Nope.</p> <p>9 Q Do you know if the matter is resolved?</p> <p>10 A I don't know. I don't believe it is.</p> <p>11 Q Okay. And that was just this past</p> <p>12 summer, so --</p> <p>13 A Yes.</p> <p>14 Q -- a few months ago?</p> <p>15 A Yes.</p> <p>16 Q Okay. In that matter, you have been paid</p> <p>17 and/or are currently being paid, fair?</p> <p>18 A Yes.</p> <p>19 Q And do you know -- and I won't hold you</p> <p>20 to a dollar figure -- an estimate of how much</p> <p>21 you've been paid in that case to date?</p> <p>22 A I -- I wanna say it was around \$20,000.</p>
<p style="text-align: right;">Page 75</p> <p>1 Q All right. Did you issue a report in</p> <p>2 that case?</p> <p>3 A I did.</p> <p>4 Q Do you remember if the -- you said the</p> <p>5 party challenging the Vermont law.</p> <p>6 Was that an individual or was that an</p> <p>7 organization or a collection of the two?</p> <p>8 A Don't recall.</p> <p>9 Q Okay. Do you remember if the NRA or a</p> <p>10 regionalized or local offshoot of the NRA was</p> <p>11 associated with or affiliated with the party</p> <p>12 challenging the Vermont law?</p> <p>13 A I don't know or recall anything about any</p> <p>14 involvement with the NRA.</p> <p>15 Q Did you -- in your course of retainer and</p> <p>16 service in that case, did you have any contact with</p> <p>17 the plaintiffs or the party challenging the law?</p> <p>18 A No.</p> <p>19 Q Is it fair to say that your conversations</p> <p>20 and activity in the case was through the law firm</p> <p>21 of Cooper & Kirk then exclusively?</p> <p>22 A Exclusively, yes.</p>	<p style="text-align: right;">Page 77</p> <p>1 Q And in that case, you were asked</p> <p>2 ultimately to estimate the commonality of ownership</p> <p>3 of certain magazines; is that -- is that a fair</p> <p>4 articulation?</p> <p>5 A Yes.</p> <p>6 Q And I'd like to ask you with respect to</p> <p>7 the California case and the AR-15.</p> <p>8 Was there sufficient data in your mind to</p> <p>9 arrive at an estimation?</p> <p>10 A I was very -- fairly confident in the</p> <p>11 estimation arrived at.</p> <p>12 Q What type of data did you use in that</p> <p>13 case to arrive at that estimation?</p> <p>14 A So I contracted with a professional</p> <p>15 survey firm to survey residents of Vermont. And</p> <p>16 they executed the survey. We got a good response</p> <p>17 rate, and asked survey respondents a variety of</p> <p>18 questions about, you know, their ownership, and so</p> <p>19 based the record on those responses.</p> <p>20 Q So was the survey -- in very general</p> <p>21 terms -- I don't need the specifics of it -- but</p> <p>22 was it generally geared towards determining if the</p>

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1 residents of Vermont owned these particular types
2 of magazines?
3 A Yes.
4 Q Okay. And again, in that case, you had
5 to -- you had to make some sort of estimation to
6 ultimately arrive at your ultimate conclusion,
7 right?
8 A Sure.
9 Q Okay. Meaning there was no central
10 repository that you could go on to get a 100 per
11 conclusive determination of how many of those
12 particular magazines were sold and/or owned in
13 Vermont at the time, right?
14 A That's right. But I would just point out
15 that having worked also with data maintained by
16 state repositories, I'm not sure I would trust,
17 honestly, the quality of those more than a high --
18 a high quality survey, so --
19 Q Sure.
20 A Yes, there's always, you know, a --
21 there's an inference involved in this reasoning,
22 but it's not, again, that if a state has a

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1 repository, you're no longer dealing with questions
2 of data integrity or inferential conclusions.
3 Q Right. And in that case, you did issue a
4 report that included a conclusion as to how many of
5 these particular magazines you were studying you
6 believed were owned in Vermont, right?
7 A That's correct.
8 Q Okay. Are those the only two cases that
9 you've served in an expert capacity involving gun
10 issues?
11 A Yes.
12 Q With the exception of this case --
13 A Yeah.
14 Q -- currently?
15 A Yeah.
16 Q Do you have any --
17 MR. DAGUE: We can go off the record for
18 one second.
19 (Discussion off the record)
20 MR. DAGUE: Okay. Back on the record.
21 BY MR. DAGUE:
22 Q Doctor, I want to ask you about your

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1 personal associations with advocacy groups.
2 Do you currently have any association
3 with a gun advocacy group right now?
4 A So when I turned 18, my father gave me a
5 life membership in the NRA, which I assume still
6 works. But to my -- I don't believe I am actively
7 involved in either with them but -- and I can't
8 think of any other agency or activist group.
9 Q Okay.
10 A I don't recall any others.
11 Q Okay. You don't -- do you pay dues
12 currently as a result of that lifetime membership?
13 A I do not.
14 Q Okay. Do you pay dues to any activist
15 group, Second Amendment or otherwise?
16 A I don't believe I do, no.
17 Q Are you on any boards of directors?
18 A I sit on the board of a nonprofit
19 educational institution in Cambridge,
20 Massachusetts. It sits on the right -- just on the
21 border of Harvard's campus.
22 Q What's that called?

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1 A It's called the Abigail Adams Institute.
2 Q And what does the Abigail Adams Institute
3 advocate for?
4 A So they're not an advocacy group. They
5 are an educational group. They -- their -- our
6 main -- well, we do two purposes. One is we try to
7 be a convening place for people who have
8 specialized disciplinary knowledge, to come
9 together and ask big questions. And we also try to
10 supplement the humanistic education of
11 undergraduates in the greater Boston area. So
12 we'll run reading groups and a -- host lectures,
13 summer seminars.
14 Q What does humanistic education mean?
15 A So humanistic -- think about the
16 humanities, about what it means to be human, about,
17 you know, great question of what makes life worth
18 living, read great texts, Plato and Aristotle and
19 Shakespeare and think about the nature of the human
20 condition.
21 Q Uh-huh. You should invite your -- you
22 should have invited them to this eight-hour

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1 deposition today.

2 A Oh, they would have -- you know.

3 Q It's riveting, right?

4 MR. CHUCK COOPER: This certainly isn't

5 what makes life worth living.

6 BY MR. DAGUE:

7 Q So lifetime member of the NRA through a

8 gift when you were 18, fair?

9 A Yes.

10 Q Any family members, members of the NRA or

11 any Second Amendment advocacy group other than, I

12 assume, your father?

13 A Yeah, he's -- he's deceased.

14 Q Okay.

15 A I don't know if he bought one for my

16 brother.

17 Q Okay.

18 A But I'm -- to my knowledge, nobody in my

19 immediate family is involved in any of these

20 advocacy --

21 Q And where are you geographically from

22 originally, Doctor?

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1 A So I grew up just in Rockville, Maryland,

2 just at the end of the Red Line here.

3 Q Okay. It's the home of NIH, right?

4 A That's right. We've got -- NIH is up

5 there and --

6 Q Right. Right.

7 Setting membership aside, are you a donor

8 to any organizations, advocacy organizations?

9 A I don't recall any donations that I made.

10 Q Any of your immediate family donors to

11 any advocacy groups that you know of?

12 A Not that I know of.

13 Q Do you own a firearm yourself?

14 A I do.

15 Q Okay. And what type of firearm do you

16 own?

17 A So I own at least -- I'm trying to

18 think -- three pistols, two shotguns, and one

19 rifle.

20 Q Okay. And are you a resident of the

21 District of Columbia or Maryland or Virginia?

22 A So I'm a resident of the District of

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1 Columbia; however, I do not own those -- keep those

2 firearms in residence here.

3 Q Okay. Do you keep them in residence in

4 another state?

5 A In another state.

6 Q Okay. And do you have a permit -- in the

7 state that you maintain those firearms, do they

8 require a permit for any of those firearms?

9 A They do not.

10 Q Okay.

11 A Which is part of the reason that they're

12 there.

13 Q Right.

14 Are you a hunter?

15 A Yes.

16 Q Are you a sports shooter?

17 A Yes.

18 Q Do you consider your ownership of those

19 weapons to -- for your purposes as a hunter or a

20 sports shooter, or for another purpose?

21 A I have also in the past used them for

22 defense, home defense, when I lived in different

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1 states.

2 Q What do you hunt?

3 A Depending on the year and likelihood of

4 getting out, deer, waterfowl, small game.

5 Q When's the last time you got out?

6 A January.

7 Q 2019?

8 A 2019, yes.

9 Q So it's not particularly frequent?

10 A Well, hunting season doesn't really --

11 hunting season basically ends for almost everything

12 in January.

13 Q Okay.

14 A There's a spring turkey season. But if

15 these days things are busy, I might get out two,

16 three times a year.

17 Q Do you shoot skeet?

18 A Years ago I did. I haven't probably for

19 a decade now.

20 Q Do you have children?

21 A No.

22 Q Okay. You mentioned having used firearms

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1 in home defense situations in the past; is that
 2 fair?
 3 A Yes.
 4 Q And has that been multiple times or just
 5 once?
 6 A Well, when I lived in states where it was
 7 less legally fraught, I would have a firearm
 8 available, as it were, you know, in my home --
 9 house.
 10 Q Okay.
 11 A There was one incident where I actually
 12 possessed it and brandished it to somebody who was
 13 trying to gain access to my house.
 14 Q How long ago was that?
 15 A Oh, that would have been probably 11 or
 16 12 years ago.
 17 Q You said brandished; you didn't have to
 18 fire the weapon --
 19 A No.
 20 Q -- during that --
 21 Was there an arrest or criminal complaint
 22 made as a result of that?

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1 A Police were called. They recognized the
 2 person as somebody who they received other
 3 complaints about in the neighborhood. They -- I
 4 pointed the direction that he ran. And I don't
 5 believe they found him that evening. I know they
 6 picked up, over the course of the next few months,
 7 two or three people. I don't know if they ever got
 8 that guy.
 9 Q Okay. Would you agree with me that
 10 issues surrounding gun ownership and generally the
 11 Second Amendment have become hotly contested in
 12 America over the last 10, 15 years?
 13 A Yes.
 14 Q Would you agree with me that I guess even
 15 before that, it was a hotly contested issue; but
 16 over the last 10, 15 years it's become even
 17 increasingly so --
 18 A Yes.
 19 Q -- is that fair?
 20 A Yes, that's fair.
 21 Q Okay. Have you ever heard of the term
 22 "the gun debate"?

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1 A I'm sure, yes.
 2 Q Okay.
 3 A It might have been phrased different
 4 ways, but --
 5 Q Sure.
 6 A -- yes.
 7 Q Let me ask you this way, just from a kind
 8 of vocabulary perspective.
 9 If I use the term "the gun debate" to
 10 summarize this hotly contested debate with respect
 11 to the Second Amendment and gun ownership, is that
 12 something you'll understand me to generally mean
 13 the -- kind of the immense state of American
 14 argument over that issue?
 15 A Yes, although I would say that the gun
 16 debate probably meant -- means something different,
 17 depending on what year you're asking about it.
 18 Q Sure.
 19 A So there was a gun debate in the '90s.
 20 There's been, I'd say, multiple gun debates. And I
 21 suppose there's always some gun debate ongoing.
 22 Q If I use the term too generally during

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1 the course of questioning, just let me know and
 2 we'll --
 3 A Sure.
 4 Q -- we'll try to hone in on that.
 5 Do you have an ideological position with
 6 respect to the American gun debate?
 7 A What do you mean by an ideological
 8 position?
 9 Q Well, do you have a firm belief or way of
 10 thinking with respect to the central issues that
 11 are discussed in the country with respect to gun
 12 ownership, gun rights, things of that nature?
 13 A And by firm, just to make sure that I
 14 understand, you -- you mean?
 15 Q Well, I mean I -- I guess it would be a
 16 question of degrees.
 17 I mean do you consider yourself to have a
 18 strong position with respect to the American gun
 19 debate?
 20 A Huh.
 21 Q Or a deeply held position?
 22 A I'm not sure any of these terms capture

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1 the -- I would say I have a concern about the
 2 American gun debate, that I worry it often doesn't
 3 capture the range of concerns, the analysis, that I
 4 think is appropriate to thinking through the
 5 important issues and tough issues.
 6 So I would say my -- my position is I
 7 would say I -- I have some skepticism towards, you
 8 know, certain sorts of arguments that have been
 9 made. I have to say sometimes from both sides in
 10 the way -- the way that's sometimes, you know,
 11 construed as -- as having partisan sides, although
 12 I would note it -- there seems to be many
 13 dimensions of these debates as well.
 14 It's -- there's some things where it's
 15 not clear that there's just one side. There might
 16 be multiple sides.
 17 So my -- I'd say my concern historically
 18 on gun debate, I've worried that we're not doing --
 19 we're not getting the debate we deserve.
 20 Q Okay.
 21 A That the debate neglects important
 22 information, the range of issues. So I would say

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1 that's -- I would say -- you know, it would be
 2 appropriate to say I've had historical skepticism
 3 towards the -- the depths of the debate.
 4 Q So when you say worried we don't get the
 5 debate we deserve, is that -- is that because you
 6 believe that the debate issues have been kind of
 7 simplified or politicized?
 8 A Well, there's two things. Certainly
 9 there's that.
 10 But Steven Pinker at Harvard is a
 11 distinguish psych -- professor of psychology there.
 12 And he was recently asked: What do you think is
 13 the biggest problem with the world today?
 14 And his answer was interesting. He said,
 15 I think we don't do -- we -- we -- we make
 16 decisions because of anecdotes rather than because
 17 of data. And then he goes through a lost list of,
 18 you know, people are terrified of things that
 19 happen at vanishing small rates. And they don't
 20 realize that, you know, sending their kid to school
 21 in a car is actually pretty dangerous compared to
 22 those other things.

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1 And he -- you know, he made out points
 2 about the war on terror. He made the points about
 3 all sorts of domestic policy. And -- and I think
 4 Steven Pinker's right. And it's -- he -- it's
 5 important that he's a psychologist. And there --
 6 there is something I think deeply ingrained in our
 7 psychology where we do reason from anecdotes, from
 8 things that are visible to us to, you know, things
 9 that elicited visceral responses. And that's part
 10 of being human.
 11 I think one concern in the gun debate is,
 12 you know, there are certain things that are seen
 13 and that elicit, you know, strong and, you know,
 14 reasonable emotional response. But then there's
 15 also questions of, you know: Well, what's the
 16 ultimate policy evidence? What's gonna save the
 17 most lives, protect the most people?
 18 And that's where this is part of my
 19 entire position in social science. You know, we
 20 just don't lead with our intuitions, and all sorts
 21 of debates about health policy, about, you know,
 22 traffic policy. You know, it requires research.

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1 And let's see, really, when you look at the
 2 numbers, what's gonna be, you know, the best
 3 outcome for the most people? What's gonna keep
 4 people safest?
 5 So I'd say that as a social scientist,
 6 I'd had a -- you know, an interest in the gun
 7 debate to say: How do we -- how do we get this
 8 right? How do we attend to data, you know, and
 9 able to cordon off the, you know, visceral
 10 reactions we have to see what's really gonna make
 11 the most sense for keeping people safe and that
 12 sort of thing.
 13 Q You mentioned the -- the partisan divide,
 14 I think is the term you used.
 15 Do you consider the, quote/unquote, gun
 16 debate to be strictly a partisan issue or a --
 17 A What'd you mean?
 18 Q -- partisan divide?
 19 A What'd you -- and when you say strictly a
 20 partisan issue --
 21 Q Well, do you consider the gun debate in
 22 partisan terms?

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1 Do you -- do you believe that it's a

2 Democrat versus Republican issue exclusively, or do

3 you believe there are people on each side of the

4 debate who necessarily aren't advocating due to

5 political reasons?

6 A So there's two things. To say one, I can

7 just -- I can show you polling data. I can show

8 you the political psychology of it. It's -- and

9 that stuff will tell you that it's perceived in

10 partisan terms. And that's just -- that's just the

11 way others -- that's the way it is perceived

12 amongst average Americans.

13 Your second part of your question seems

14 to be asking a -- maybe a slightly different

15 question, which is, you know: Are there

16 interesting people with things worth saying across

17 the political spectrum? I think, you know, sure,

18 that may be the case, and often is the case. It'd

19 be surprising to me if it were, you know, strictly

20 not the case.

21 But I think that there's no doubt that

22 the -- the average American voter perceives this as

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1 being a central access in a great amount of

2 partisan division.

3 Q Do you have a personal opinion with

4 respect to the issue of universal gun -- universal

5 background checks prior to gun purchase?

6 A Do I have a personal -- I can't say I've

7 looked into this in great detail. The -- every so

8 often I read an article first of all appraising me

9 of what exactly the current law is, which as I

10 often find is misrepresented, sometimes in news

11 articles.

12 For me, at the end of the day, I'd want

13 to evaluate the very -- whatever very specific

14 proposal is being made. So even to ask the

15 question, you know, are you for universal

16 background checks, I just want to know how -- what

17 do you mean by that? How would that be executed?

18 What would it look like in practice? Then I could

19 have an opinion about it.

20 Q Okay.

21 A I says it's a -- I think it's an open

22 question, an interesting question. I would just

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1 want to know -- let's think about the details of

2 how it works in practice, and then we can evaluate

3 it.

4 Q Okay. So fair to say you don't have a

5 blanket position on that particular issue; you need

6 to see details and know the entire specifics of the

7 issue before you would make a determination?

8 A Yes.

9 Q How about -- do you have a personal

10 position on United States citizens' access or right

11 to access automatic assault weapons?

12 A I -- I guess by position, are you saying

13 an -- an opinion on it or a --

14 Q Yeah. Yeah.

15 A Yeah, my opinion is it's not something --

16 I guess I haven't thought about it much. It's not

17 something that particularly concerns me, you know,

18 so I don't have strong feelings about it.

19 Q How about a position or opinion on laws

20 limiting gun access to individuals named on

21 terrorist watch lists, is that something you've

22 given any thought to or have an opinion on?

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1 A Yeah, I would want to see the -- the

2 details on any proposal: How does it work? Who's

3 on it? How do you get off? What are the standards

4 of use?

5 Q How about same question with respect to

6 the issue that's come up recently with respect to

7 accessibility to bump stocks, are you familiar with

8 the term "bump stock"?

9 A Right. Yeah, again, I haven't thought a

10 lot about bump stocks. I've certainly never seen

11 or used one. I have -- again, I'd want to see the

12 details. I don't know how easy these things are to

13 make to begin with. I don't know how many -- so

14 I'd want to see the details.

15 Q Do you think individuals that have felony

16 convictions should have access to firearms in the

17 United States?

18 A My inclination is I think they should

19 not.

20 Q Okay. Do you think individuals who have

21 been adjudicated with mental health problems should

22 have access to guns limited in any way?

<p style="text-align: right;">Page 98</p> <p>1 A I'd want to hear the details, but it's</p> <p>2 possible.</p> <p>3 Q Okay.</p> <p>4 A Depending on the proposal.</p> <p>5 Q And how about with respect to individuals</p> <p>6 convicted or adjudicated of domestic violence</p> <p>7 crimes?</p> <p>8 A Again, I'd have to hear the details.</p> <p>9 Q Fair enough.</p> <p>10 In preparation for issuance of this</p> <p>11 report, Defendants' Exhibit 1, did you study New</p> <p>12 York's -- New York state's entire gun paradigm or</p> <p>13 entire system of gun laws?</p> <p>14 A I certainly studied many gun laws in New</p> <p>15 York, but I -- I don't think it could be possible</p> <p>16 for me to be surprised by how many gun laws New</p> <p>17 York has on the books that I -- that might exceed</p> <p>18 even that search. So I certainly did research laws</p> <p>19 in New York, the -- the history and development of</p> <p>20 those laws.</p> <p>21 I know your code is very long. And I</p> <p>22 know these issues have long been a concern in this</p>	<p style="text-align: right;">Page 100</p> <p>1 this case?</p> <p>2 A So what's complicated here is I'm aware</p> <p>3 of there's an ongoing recent controversy and</p> <p>4 litigation pertaining to these very issues. And so</p> <p>5 certainly I'm -- I looked into them, beginning with</p> <p>6 my understanding that this is a fast-changing</p> <p>7 landscape, particularly in regarding storage and</p> <p>8 transport.</p> <p>9 So I -- I would defer to others, if those</p> <p>10 are your particular concerns, for the latest legal</p> <p>11 take, but -- yeah, so at a broad level.</p> <p>12 Q Okay. Are you familiar at all with the</p> <p>13 New York Safe Act? Is that something you looked</p> <p>14 into during your preparation for this case?</p> <p>15 A So I believe, if I'm -- if I'm -- I may</p> <p>16 have misremembered this, but I believe that the</p> <p>17 Safe Act, that was actually responsible for</p> <p>18 amending the process by which you might seek an</p> <p>19 extension for harassment.</p> <p>20 Q Are you familiar with any other elements</p> <p>21 of the Safe Act other than the elements related to</p> <p>22 Penal Law 400 that are the focus of this lawsuit?</p>
<p style="text-align: right;">Page 99</p> <p>1 state, so I can say certainly with the -- the laws</p> <p>2 that I thought were relevant to this case, I looked</p> <p>3 into.</p> <p>4 Q Okay. And sitting here today, do you</p> <p>5 remember which laws those were that you considered</p> <p>6 relevant that you looked into?</p> <p>7 A So primarily those cited in my report.</p> <p>8 Q Okay. And as you sit here today, do you</p> <p>9 recall any gun law -- New York gun laws that you</p> <p>10 looked into that were not cited in the report that</p> <p>11 I should know about?</p> <p>12 A So I -- one thing I was interested in is</p> <p>13 when were the origins of some of these laws. You</p> <p>14 know, a lot of searching I did, I -- I couldn't</p> <p>15 tell you for sure, I couldn't recall the range of</p> <p>16 stuff I looked at.</p> <p>17 (Sotto voce discussion between counsel.)</p> <p>18 BY MR. DAGUE:</p> <p>19 Q Sorry. Sorry, Doctor.</p> <p>20 Would you consider yourself generally</p> <p>21 familiar with how New York State regulates a sale</p> <p>22 or a transfer of firearms, in light of your work on</p>	<p style="text-align: right;">Page 101</p> <p>1 A No, I primarily focused on the aspects of</p> <p>2 the Safe Act relevant to this case.</p> <p>3 Q Okay. Are you aware of any recent</p> <p>4 amendments to Penal Law Section 400.00(5)? Is that</p> <p>5 something you looked into in preparation for this</p> <p>6 case?</p> <p>7 A Can you repeat the 00, which one?</p> <p>8 Q Yeah, 00(5).</p> <p>9 A I'm gonna read it one more time in full.</p> <p>10 Q Yeah.</p> <p>11 (Sotto voce discussion between counsel.)</p> <p>12 BY MR. DAGUE:</p> <p>13 Q Okay. So -- sorry.</p> <p>14 Are you aware of any recent amendments or</p> <p>15 changes to Penal Law 400.00(5)?</p> <p>16 A I am -- by recent, you mean -- could you</p> <p>17 just say the --</p> <p>18 Q How about --</p> <p>19 A -- time period?</p> <p>20 Q -- how about within the last 30 days?</p> <p>21 A No.</p> <p>22 Q Okay. Okay. Do you have a personal</p>

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1 opinion or belief about how New York regulates sale
 2 or transfer of guns, other than your opinions set
 3 forth in the report?
 4 A Not particularly.
 5 Q Okay. So you don't have a generalized
 6 feeling that New York is too strict or too liberal
 7 with respect to guns?
 8 A The -- what I learned from my expert
 9 preparation on this particular question raised many
 10 other questions for me about say the -- the
 11 benefits, rationals. But, no, that was not my
 12 focus in this case, so I don't have a -- a
 13 well-developed position on the -- the wider regime
 14 for controlling guns in New York.
 15 Q Could you expand upon that a little bit,
 16 about what -- what other questions were raised as
 17 you did research into this particular issue?
 18 A Well, so I -- I'm aware of I guess
 19 ongoing litigation that had concern for a while the
 20 transport of a gun. And my understanding is that
 21 there was a -- after many years, there was a last
 22 minute change that the -- a legislative change or

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1 bureaucratic change on that
 2 So it struck me that there had been a
 3 history of some controversy about when and under
 4 what circumstances somebody could even transport a
 5 legally possessed firearm. And so I'm aware of
 6 that controversy, but that wasn't my focus here.
 7 Q Okay. Based on your focus and research
 8 here, do you have a -- did you develop a belief as
 9 to how New York's gun laws fit in among other state
 10 laws, other states' laws?
 11 A So, actually, when I had to research not
 12 for this case but for the estimation of AR-15
 13 manufacturing sales, the -- New York was a state
 14 that came up as having -- I was aware that there
 15 were at least different jurisdictions in New York
 16 where ownership of certain guns is more difficult
 17 or more restricted.
 18 Q Yeah, you testified earlier that you
 19 maintain your personal guns in a state that is -- I
 20 think you used the term "less fraught"; is that --
 21 A Yes --
 22 Q -- is that --

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1 A -- less --
 2 Q Yeah.
 3 A -- I -- I will use it now. Less fraught
 4 with legal difficulties.
 5 Q Okay. And what does that mean, less
 6 fraught with legal difficulties?
 7 A When I arrived in the District of
 8 Columbia three years ago, they had still not
 9 updated their firearms permitting system as had
 10 been required by law. There's a certain point they
 11 required four hours of instructions at a place -- I
 12 think there was one gun store in the District that
 13 you were allowed to buy guns from. There were
 14 instruction requirements that very few people could
 15 fulfill.
 16 There was actually, at that time, a
 17 requirement that you notify -- if you wanted to
 18 register a firearm, first call up the police,
 19 notify them that you were going to bring a firearm
 20 into the District. As soon as they had I guess
 21 acquiesced to that notification, you were then to
 22 drive specifically to the office, then bring the

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1 firearm into the police station, hoping that your
 2 coming was properly heralded.
 3 It -- it struck me as a -- a system that
 4 was ripe with inconsistencies and unclarity. And
 5 actually a lot has happened even in the last few
 6 years to try to at least bring some procedural
 7 clarity. But the -- the -- the risks of running
 8 afoul of a ever-changing, ambiguous, and -- and
 9 burdensome permitting process, just seemed like the
 10 sensible thing to do was to not be armed in D.C. --
 11 Q Okay.
 12 A -- given those risks.
 13 Q Can you tell me what your understanding
 14 of Penal Law Section 400.00(5) is?
 15 A So --
 16 Q (5)(a), I'll --
 17 A Yeah, so the -- I mean the part relative
 18 to this case was that, essentially, to have a
 19 handgun legally owned in New York, there is a
 20 requirement for this handgun permit. And the
 21 specific question of this section is whether
 22 that -- the application and detail should be a

<p style="text-align: right;">Page 106</p> <p>1 matter of public record.</p> <p>2 Q And with respect to -- well, let me back</p> <p>3 up real quickly.</p> <p>4 And for vocabulary purposes, are you fine</p> <p>5 with me referring to this section as "Penal Law</p> <p>6 400," for the course --</p> <p>7 A Sounds --</p> <p>8 Q -- of this depo?</p> <p>9 A Great. We'll --</p> <p>10 Q Okay.</p> <p>11 A -- consider that, yes.</p> <p>12 Q I might even call it PL 400.</p> <p>13 A Sure.</p> <p>14 Q Okay. If you have any questions, if I'm</p> <p>15 referring to a specific subsection, just let me</p> <p>16 know. But generally, I'll use "Penal Law 400."</p> <p>17 Do you know, under PL 400, how this</p> <p>18 material is publicly accessible?</p> <p>19 A My understanding -- well, right now, my</p> <p>20 understanding is an injunction. But, historically,</p> <p>21 I believe it required something analogous to a</p> <p>22 FOIA-type request.</p>	<p style="text-align: right;">Page 108</p> <p>1 person's address, and even the -- the type of gun.</p> <p>2 Q Is that your current understanding, that</p> <p>3 the public disclosure is name, address, and type of</p> <p>4 weapon?</p> <p>5 A Again, my current understanding is that</p> <p>6 it's under an injunction and this is inaccessible.</p> <p>7 Q Okay.</p> <p>8 A So I -- it's interesting, having had</p> <p>9 other experience reaching out to officials for</p> <p>10 public records, I've also experienced enormous</p> <p>11 disparity -- procedural disparity in what a</p> <p>12 secretary decides to fax you, what they decide to</p> <p>13 disclose.</p> <p>14 So I'm not also certain about, in</p> <p>15 practice, which different counties or, you know,</p> <p>16 might -- how they might respond to these requests</p> <p>17 and whether there's complete regularity in their</p> <p>18 actual practices.</p> <p>19 Q Right. And I'm just trying to delve</p> <p>20 into, you know, your knowledge of injunction aside</p> <p>21 or disparities in application. I'm just trying to</p> <p>22 get a baseline sense as to what your belief is as</p>
<p style="text-align: right;">Page 107</p> <p>1 Q Okay. And you said you understand that</p> <p>2 currently there's an injunction on the law; is that</p> <p>3 your --</p> <p>4 A My understanding is there's some -- at</p> <p>5 the current point, some restriction, I believe</p> <p>6 pending the outcome of this sort of -- these sort</p> <p>7 of cases and objections.</p> <p>8 Q Okay. And your understanding of the --</p> <p>9 the public access of this law is that it's through</p> <p>10 a FOIL; is that fair?</p> <p>11 A It's something analogous to that. You'd</p> <p>12 have to in -- in -- historically, you would</p> <p>13 inquire --</p> <p>14 Q Yeah.</p> <p>15 A -- and could ask for that information.</p> <p>16 Q And do you know under this law, PL 400,</p> <p>17 what information specifically is publicly</p> <p>18 accessible from FOIL?</p> <p>19 A So my understanding, which comes more</p> <p>20 from a newspaper of both initial reports of</p> <p>21 controversies, is that things that could be</p> <p>22 disclosed would include the person's name, the</p>	<p style="text-align: right;">Page 109</p> <p>1 to what info is deemed public under PL 400 --</p> <p>2 A So --</p> <p>3 Q -- if someone makes --</p> <p>4 A -- yeah --</p> <p>5 Q -- a FOIA request.</p> <p>6 A -- so my understanding is the name for</p> <p>7 sure --</p> <p>8 Q Yes.</p> <p>9 A -- and that historically people have been</p> <p>10 able to access, at least some circumstances,</p> <p>11 address as well as type of gun.</p> <p>12 Q Okay.</p> <p>13 MR. DAGUE: I know that you guys got to</p> <p>14 order lunch. I'm going to wrap up. We're going to</p> <p>15 go out. Give me three minutes. I'll wrap up. And</p> <p>16 then we can take a break and you can -- is that</p> <p>17 fair?</p> <p>18 MR. CHUCK COOPER: We can make an order</p> <p>19 and then continue.</p> <p>20 MR. DAGUE: Yeah, yeah. Because we've</p> <p>21 been going for about an hour anyway, so it's a good</p> <p>22 time for a break.</p>

<p style="text-align: right;">Page 110</p> <p>1 BY MR. DAGUE:</p> <p>2 Q Do you know when this law, PL 400, was</p> <p>3 codified into law in New York? Is that something</p> <p>4 you looked into?</p> <p>5 A Yeah, my recollection was like in the</p> <p>6 '60s.</p> <p>7 Q Okay. And do you know if its original</p> <p>8 codification included the exemptions? Well, strike</p> <p>9 that. Let me lay a foundation.</p> <p>10 Do you know if the current law contains</p> <p>11 exemptions s?</p> <p>12 A Right, so it -- it contains exemptions</p> <p>13 which we -- I believe we mentioned earlier. It</p> <p>14 came out of that Safe Act and the controversy</p> <p>15 partly tied, in my understanding, to the -- some of</p> <p>16 the initial controversy the newspapers caused. So</p> <p>17 there are exemptions now that can apply if you</p> <p>18 swear that you meet certain standards, one of</p> <p>19 them -- well, yes. So the answer is yes.</p> <p>20 Q Okay. And let me just tee that up for</p> <p>21 you.</p> <p>22 What are the exemptions, to your</p>	<p style="text-align: right;">Page 112</p> <p>1 law enforcement experience. And -- and that can</p> <p>2 also be a factor here.</p> <p>3 But for the purposes of the question of</p> <p>4 this case, the relevant exemptions are noted there</p> <p>5 on the case on top of page 3.</p> <p>6 Q Okay.</p> <p>7 MR. DAGUE: Let's go off.</p> <p>8 (Recess)</p> <p>9 MR. DAGUE: Okay, Doctor, back on the</p> <p>10 record.</p> <p>11 BY MR. DAGUE:</p> <p>12 Q And understand you're still under oath,</p> <p>13 obviously.</p> <p>14 I want to turn your attention to your</p> <p>15 report, which has been marked in the matter as</p> <p>16 Defendants' Exhibit 1. Now, just in terms of</p> <p>17 laying kind of the ground rules here, I intend to</p> <p>18 walk through portions of this report throughout the</p> <p>19 deposition. What I'd like to accomplish is I will</p> <p>20 direct your attention to the specific part of the</p> <p>21 report that I intend to ask you about.</p> <p>22 A Uh-huh.</p>
<p style="text-align: right;">Page 111</p> <p>1 knowledge?</p> <p>2 And, again, not a quiz. Just trying to</p> <p>3 get your knowledge as --</p> <p>4 A It's actually there in my report. Let me</p> <p>5 just turn to it.</p> <p>6 Okay. I will just read from page 3.</p> <p>7 Q Okay.</p> <p>8 A Specifically an applicant requests a</p> <p>9 public records exemption if, A, quote, the</p> <p>10 applicant's life or safety may be in danger by</p> <p>11 disclosure.</p> <p>12 Q Doctor, hold on for one second. Just for</p> <p>13 her --</p> <p>14 A Yes.</p> <p>15 Q -- sanity --</p> <p>16 A Yeah.</p> <p>17 Q -- why don't we just say we'll direct --</p> <p>18 fair to say that your understanding of the</p> <p>19 exemptions is contained on page 3 of your report?</p> <p>20 A Yes. Now, my -- just as a footnote to</p> <p>21 that, I believe there are also some exemptions that</p> <p>22 are gonna apply to law -- people who've had prior</p>	<p style="text-align: right;">Page 113</p> <p>1 Q I do not anticipate or expect you to</p> <p>2 regurgitate this thing from memory.</p> <p>3 A Gotcha.</p> <p>4 Q If I'm asking about a portion and you</p> <p>5 don't know where it is or if there's other parts</p> <p>6 that you think are relevant, let me know. But</p> <p>7 that's my goal, is to point you in the direction,</p> <p>8 so -- okay.</p> <p>9 Do you have a copy of Exhibit 1 in front</p> <p>10 of you?</p> <p>11 A I do.</p> <p>12 Q Okay. I want to just briefly point your</p> <p>13 attention to the first paragraph here where you</p> <p>14 say --</p> <p>15 MR. DAGUE: And, Barbara, for your</p> <p>16 edification, we'll be reading from this somewhat.</p> <p>17 I will provide you with a copy of this at the end.</p> <p>18 BY MR. DAGUE:</p> <p>19 Q The first paragraph, I have been asked to</p> <p>20 evaluate the reports submitted by Dr. Zeoli --</p> <p>21 Z-E-O-L-I -- Dr. Sege -- S-E-G-E -- and</p> <p>22 Dr. Hamilton -- spelled as it sounds -- in support</p>

<p style="text-align: right;">Page 114</p> <p>1 of New York's defense of Penal Law 400, which makes</p> <p>2 the name and address of any person granted a</p> <p>3 handgun license a public report</p> <p>4 Do you see that?</p> <p>5 A I do.</p> <p>6 Q Okay. Now, I want to ask you a little</p> <p>7 bit about the scope of your task here.</p> <p>8 A Uh-huh.</p> <p>9 Q Were you asked to opine with respect to</p> <p>10 the constitutionality or legal viability of PL 400,</p> <p>11 or were you asked to simply rebut the reports of</p> <p>12 Zeoli, Sege, and Hamilton?</p> <p>13 A I was asked to rebut -- to evaluate the</p> <p>14 reports. The challenge, though, is as a -- a</p> <p>15 social scientist, when I evaluate public policy,</p> <p>16 you know, at the highest level you can think</p> <p>17 that -- of this as a -- a cost benefit analysis.</p> <p>18 So I need to ask, you know, what are the -- the</p> <p>19 potential benefits of this law, the most likely</p> <p>20 benefits. And those are substantially what those</p> <p>21 three reports are arguing about.</p> <p>22 But to -- to even evaluate those</p>	<p style="text-align: right;">Page 116</p> <p>1 review or new review of this law from your field of</p> <p>2 expertise, or were you asked to look at the law</p> <p>3 through the lens of the three expert reports</p> <p>4 provided with that?</p> <p>5 A I was asked to evaluate the three expert</p> <p>6 reports.</p> <p>7 Q Okay. And the report itself is entitled</p> <p>8 "rebuttal report."</p> <p>9 A Uh-huh.</p> <p>10 Q Do you see that?</p> <p>11 A That's right.</p> <p>12 Q What does that mean? Why did you entitle</p> <p>13 it "rebuttal report"?</p> <p>14 A I thought that's what we're supposed to</p> <p>15 entitle these reports.</p> <p>16 Q Okay.</p> <p>17 A That -- that was totally proforma.</p> <p>18 Q Fair enough.</p> <p>19 MR. DAGUE: Just off the record for a</p> <p>20 second.</p> <p>21 (Discussion off the record)</p> <p>22 BY MR. DAGUE:</p>
<p style="text-align: right;">Page 115</p> <p>1 arguments in a larger policy, you might say, well,</p> <p>2 what are the costs on the other -- you know,</p> <p>3 what -- what are the downsides. So, you know, if</p> <p>4 this potentially could save one from child's life</p> <p>5 every century, that could be a benefit, again, but</p> <p>6 at what price.</p> <p>7 And so the -- the beginning part of this</p> <p>8 report is my attempt to just understand what's</p> <p>9 the -- the universe we're considering in terms of</p> <p>10 cost and benefits, who might be adversely affected</p> <p>11 by this law, you know, to what degree are the</p> <p>12 benefits that the doc -- the three doctors arguing</p> <p>13 for stand up to scrutiny.</p> <p>14 And so to be clear in answering your</p> <p>15 question, my -- my primary purpose is to evaluate</p> <p>16 their arguments. But that evaluation, in -- in my</p> <p>17 opinion requires thinking about the -- the -- the</p> <p>18 terms of the cost and benefits in the sort of</p> <p>19 widest scope.</p> <p>20 Q Okay. And I guess what I'm wondering is</p> <p>21 partially answered.</p> <p>22 Were you asked to take a de novo or clear</p>	<p style="text-align: right;">Page 117</p> <p>1 Q Were you asked to provide -- were you</p> <p>2 asked by counsel to provide an assessment of the</p> <p>3 constitutionality of PL 400?</p> <p>4 A I was asked to evaluate the three expert</p> <p>5 witness reports.</p> <p>6 Q Okay. Do you believe in the course of</p> <p>7 your evaluation of the three expert reports that</p> <p>8 you provided an opinion as to the constitutionality</p> <p>9 of this law?</p> <p>10 A I certainly had many questions that arose</p> <p>11 regarding constitutionality. And -- and,</p> <p>12 specifically, just to lay out what I'm trying to do</p> <p>13 and why these questions arose, if -- if we're to</p> <p>14 think about the cost of this law, the question --</p> <p>15 one question for me is: You know, what are other</p> <p>16 similar circumstances, analogous circumstances,</p> <p>17 other -- I mean I take it, you know, this law is --</p> <p>18 is impinging on an enumerated right in the</p> <p>19 Constitution. There are many enumerated rights in</p> <p>20 the Constitution.</p> <p>21 So as a test case, you know, how are</p> <p>22 other rights, Constitutionally enumerated rights,</p>

<p style="text-align: right;">Page 118</p> <p>1 protected and what deference is given the</p> <p>2 protection of privacy surrounding those rights.</p> <p>3 And so it -- for me, it's part and parcel of this</p> <p>4 cost benefit analysis.</p> <p>5 You know, thinking about, on the one</p> <p>6 hand: What are the -- what other things are like</p> <p>7 this? How do we evaluate those things? And, you</p> <p>8 know, the Constitution's obviously the -- the</p> <p>9 reference point for those analogs. And, you know,</p> <p>10 what are the potential -- you know, what are --</p> <p>11 what are -- if there are for those other protected</p> <p>12 rights, you know, strong barriers, what's the</p> <p>13 rationale behind those barriers? How do we think</p> <p>14 about the cost to violating them.</p> <p>15 So I -- the Constitutional analysis I do</p> <p>16 here I think raises my questions about the</p> <p>17 constitutionality of this law. But my purpose was</p> <p>18 to explore this in -- in the context of</p> <p>19 establishing the potential costs.</p> <p>20 Q Okay.</p> <p>21 A The potential and actual costs of this</p> <p>22 law.</p>	<p style="text-align: right;">Page 120</p> <p>1 Q -- are you or are you not offering an</p> <p>2 expert opinion as to the constitutionality of PL</p> <p>3 400?</p> <p>4 A Yeah, that's beyond the scope of what I</p> <p>5 was asked to do.</p> <p>6 Q Okay. Are you or are you not offering an</p> <p>7 opinion with respect to the legality of PL 400, or</p> <p>8 is that --</p> <p>9 A And I --</p> <p>10 Q -- beyond the scope?</p> <p>11 A -- I'm not a lawyer. I'm -- what I'm</p> <p>12 offering here is an evaluation of the three expert</p> <p>13 witnesses' claims.</p> <p>14 Q Okay. All right. Let's look at the</p> <p>15 third full paragraph on page 1 of the report if we</p> <p>16 could.</p> <p>17 I'm going to direct your attention to the</p> <p>18 second sentence of that paragraph that reads, Even</p> <p>19 if parents and victims of domestic abuse did</p> <p>20 systematically avail themselves of the information</p> <p>21 provided by handgun license records -- and there is</p> <p>22 no evidence that they have -- the incidents and</p>
<p style="text-align: right;">Page 119</p> <p>1 Q Okay. So in your analysis, you believe</p> <p>2 you uncovered some constitutional questions, but</p> <p>3 did you answer those questions through this report?</p> <p>4 A So I -- I -- this report is fundamentally</p> <p>5 about evaluating Dr. Zeoli, Dr. Sege, Dr. Hamilton.</p> <p>6 It strikes me there are deep constitutional</p> <p>7 concerns, which -- which I've out -- outlaid here.</p> <p>8 Q Okay.</p> <p>9 A I can tell you, at least in the context</p> <p>10 of my evaluation, the -- the claimed benefits of</p> <p>11 this law I found extraordinarily unconvincing,</p> <p>12 which then has to be weighed against what are --</p> <p>13 what are the costs. And if the costs, as I laid</p> <p>14 them out in those first few pages, strike me as --</p> <p>15 as, you know, fairly substantial.</p> <p>16 Q Okay.</p> <p>17 A But the constitutional reasoning is -- is</p> <p>18 instrumental to trying to understand and evaluate</p> <p>19 the arguments of the other three experts.</p> <p>20 Q And I just want to be clear so that I</p> <p>21 understand the full scope of this --</p> <p>22 A Uh-huh.</p>	<p style="text-align: right;">Page 121</p> <p>1 scenarios that the authors wish to prevent are so</p> <p>2 rare that handgun ownership is not a useful risk</p> <p>3 indicator for the purposes they propose,</p> <p>4 particularly on a cost benefit basis.</p> <p>5 Do you see that?</p> <p>6 A Yes.</p> <p>7 Q And you wrote that, correct?</p> <p>8 A Yes.</p> <p>9 Q Okay. When you use the term "rare" with</p> <p>10 respect to domestic violence and unintentional</p> <p>11 handgun death, what do you mean in this context by</p> <p>12 the term "rare"?</p> <p>13 A Right. For all of these things, it's</p> <p>14 useful to consider to consider these in saying in a</p> <p>15 broader context of things that I think we're</p> <p>16 familiar with. So if -- if I were to ask you, you</p> <p>17 know: Are you concerned about the threat that a</p> <p>18 bathtub poses to your child or other people's</p> <p>19 child? Are you concerned about the threat that</p> <p>20 cars pose? Are you concerned about the threat that</p> <p>21 your medicine cabinet poses?</p> <p>22 And if I were to tell you, well, whatever</p>

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1 concerns you have about that, the deaths caused by
 2 handguns in order of magnitude less -- 40 times
 3 less, something like that, then I would say, well,
 4 rare compared -- compared to these other daily
 5 things we interact with, apparently without great
 6 concern, which still do present some risks, even
 7 compared to those, these are much, much less likely
 8 to occur, incidents regarding handguns in the two
 9 scenarios outlined.

10 So "rare," I think in -- you know, you're
 11 going about your average, everyday life, you know,
 12 some things are likely, some things are unlikely.
 13 You know, a lightning strike I think is rare. In
 14 the U.S., something like 30 to 60 people are killed
 15 by lightning each year. I think that's a rare
 16 event. Something like 50 or 100 kids are killed by
 17 handguns accidentally each year.

18 So I mean if -- if you think lightning
 19 strikes are rare, which, you know, pardon me, if
 20 lightning strikes killing someone is rare, I'm
 21 trying to, you know, say what other common familiar
 22 items do we identify in the world and how we think

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1 about their prevalence risk, you know, rarity,
 2 and -- and so, yeah, rare in the common parlance,
 3 it seems to me these events --

4 Q Okay.

5 A -- are pretty rare.

6 Q Do you consider the use of a handgun in
 7 the perpetration of a domestic violence -- a
 8 domestic violence incident to be rare on the order
 9 of a lightning strike?

10 A It's -- there's -- it's slight -- at
 11 least in New York, it's slightly more prevalent
 12 than lightning strikes on a yearly basis.

13 Q How about on a national level? Do you
 14 consider it to be akin to the rarity of a
 15 lightning strike just in a domestic violence
 16 context?

17 A In a domestic violence context, yeah,
 18 it's more common than lightning strikes, you know,
 19 less common than many other things, but --

20 Q Okay. And do you -- with respect to the
 21 use of handguns and unintentional deaths of
 22 children, do you consider that to be rare, in the

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1 same order as lightning strikes --

2 A It --

3 Q -- in New York?

4 A -- it -- it turns out, nationally, it's
 5 about as rare as a national (sic) -- as a
 6 lightning strike. In New York, it's much rarer.

7 Q And how about the use of unintentional
 8 handgun injuries, not the deaths among children, is
 9 that rare, on the order of lightning strikes?

10 A That's more than lightning strikes.

11 Q Okay.

12 A But I -- I -- the -- I -- the statistics
 13 I've seen on injuries and the multiples compared to
 14 deaths would place it above lightning strikes.

15 Q You mentioned, you know, like incidents
 16 that maybe have a higher measure of probability,
 17 like you mentioned use of cars --

18 A Uh-huh.

19 Q -- bathtub safety, things like that,
 20 right?

21 A Uh-huh.

22 Q You understand that those things are

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1 regulated as well; there are laws with respect to
 2 transportation?

3 A You need law for a bathtub permit? Can
 4 you --

5 Q Sure. But I'm asking --

6 A Yeah.

7 Q -- about vehicles --

8 A Yes. And I'm -- I'm sorry --

9 Q -- specifically.

10 A -- my students, often I ask them to see
 11 how it's -- so regulation is something we talk
 12 about a lot in the business school. And it's often
 13 this blanket concept.

14 Q Uh-huh.

15 A And so it is -- obviously, we have
 16 various sorts of regulation for a lot of different
 17 things.

18 Q Right. And we have laws directed at the
 19 safety of children in automobiles, right?

20 A Uh-huh. Yes.

21 Q So we have laws that are directed at the
 22 use of safety harness or car seats in vehicles for

<p style="text-align: right;">Page 126</p> <p>1 children, right?</p> <p>2 A Right</p> <p>3 Q And your anticipation that those laws</p> <p>4 were created, in part, for the children's safety?</p> <p>5 A Right</p> <p>6 Q Okay. And we have laws about the use of</p> <p>7 illicit drugs and/or alcohol when operating a motor</p> <p>8 vehicle; is that right?</p> <p>9 A That's correct</p> <p>10 Q And would you agree with me that those</p> <p>11 laws were, in part, put in place for the safety of</p> <p>12 individuals on the road?</p> <p>13 A Yes.</p> <p>14 Q Okay. Now, we've talked a little bit</p> <p>15 about the distinction between numbers in New York</p> <p>16 versus nationally.</p> <p>17 And what I'm wondering is, in your</p> <p>18 opinion, would a state like New York be able to</p> <p>19 observe national trends and national data when</p> <p>20 creating or justifying a law, or are they limited</p> <p>21 to domestic trends and numbers only?</p> <p>22 A Well, I think it would depend.</p>	<p style="text-align: right;">Page 128</p> <p>1 exact -- you know, it'd depend on the nature of</p> <p>2 that epidemic, what caused it to spread, what</p> <p>3 reasons you have to think it is gonna spread. You</p> <p>4 know, the -- the devil is certainly in the details</p> <p>5 there.</p> <p>6 And the argument would have to be made</p> <p>7 on -- on why, I suppose, New York thinks that</p> <p>8 whatever is going on in Hawaii or whatever is</p> <p>9 something that's relevant for understanding of</p> <p>10 threats we might face here.</p> <p>11 Q Okay. In that same section of the</p> <p>12 report, looking in paragraph three, page 1, you use</p> <p>13 the term "risk indicator," and say, Handgun</p> <p>14 ownership is not a useful risk indicator for the</p> <p>15 purposes that they propose.</p> <p>16 A Uh-huh.</p> <p>17 Q Do you see that?</p> <p>18 A Yep.</p> <p>19 Q What do you mean by the term "risk</p> <p>20 indicator" in that context?</p> <p>21 A Yeah. So the -- so the question is: Is</p> <p>22 this knowledge, in asking about this, going to be</p>
<p style="text-align: right;">Page 127</p> <p>1 Q Okay. What would it depend on?</p> <p>2 A Well, it would depend on the reasons New</p> <p>3 York had in thinking these trends would extrapolate</p> <p>4 to New York. So I -- you know, if they're getting</p> <p>5 worse and worse winters in Colorado, you know, and</p> <p>6 maybe the -- winter is getting worse nationally but</p> <p>7 you're getting worse in one region, you'd wanna</p> <p>8 know is this a West Coast phenomenon. If it's not,</p> <p>9 then the East Coast should also be thinking about</p> <p>10 it.</p> <p>11 Q Okay.</p> <p>12 A It'd just -- I mean it'd have to be in</p> <p>13 the details --</p> <p>14 Q Yeah.</p> <p>15 A -- of whatever --</p> <p>16 Q So, I mean, but generally, do you believe</p> <p>17 that if there's an epidemic of something going on</p> <p>18 nationally or in other another, that a state</p> <p>19 legislature would be permitted to take that issue</p> <p>20 up in law to try to avoid spread of the epidemic in</p> <p>21 their state?</p> <p>22 A Yeah, but, again, it would depend on</p>	<p style="text-align: right;">Page 129</p> <p>1 systematically useful? And, you know, you can</p> <p>2 think about it in the context of lightening</p> <p>3 strikes. So I'm -- I'm a parent. I'm gonna drop</p> <p>4 off my kids at a playmates' house. And maybe every</p> <p>5 time I do that, I should formally ask them, Are you</p> <p>6 gonna let the kids play outside if it begins to</p> <p>7 rain?</p> <p>8 We can have every parent asking that</p> <p>9 every single time. Be kinda bizarre to. Because,</p> <p>10 first of all, like there's a commonsense</p> <p>11 expectation. Like generally, for the most part,</p> <p>12 kids are probably gonna come inside because they</p> <p>13 don't wanna get wet. And parents are probably</p> <p>14 gonna, you know, be sensible and ask the kids to</p> <p>15 come inside. It gets crazy. People -- parents are</p> <p>16 gonna ask the kids to come inside if it gets crazy</p> <p>17 outside.</p> <p>18 But even if kids were to linger outside a</p> <p>19 little longer, there -- there is a chance that they</p> <p>20 would get struck by lightening, but it's a very,</p> <p>21 very small chance. And so the question is: Would</p> <p>22 it be worthwhile for parents to be systematically</p>

<p style="text-align: right;">Page 130</p> <p>1 concerned, for them to lose sleep over concerns</p> <p>2 that their kids will even get struck by lightening,</p> <p>3 for them to be asking at every engagement what your</p> <p>4 weather plans are gonna be.</p> <p>5 And the -- the claim I'm making here is</p> <p>6 be -- because -- if these incidents are so rare,</p> <p>7 you know, probably you should spend your time</p> <p>8 asking about, you know: How many bathtubs are</p> <p>9 there in the house? Are they gonna have restricted</p> <p>10 access to those bathtubs? Anyone gonna be, you</p> <p>11 know -- I mean there's a lot of other things we</p> <p>12 could worry about.</p> <p>13 So the question is, you know: Are -- we</p> <p>14 have finite time, resources. Of the -- the</p> <p>15 thousand things that might harm a child at a</p> <p>16 playmate's house, you know, what -- what are gonna</p> <p>17 be the most important things, the most valuable</p> <p>18 things to ask about, to inquire about.</p> <p>19 And my claim here is that, you know, as</p> <p>20 risk indicators go, evidentially this, at least</p> <p>21 statistically, is pretty low on a -- on a long list</p> <p>22 of things. So -- so I don't -- I don't -- wouldn't</p>	<p style="text-align: right;">Page 132</p> <p>1 supervision, sure, that might be a reason to ask</p> <p>2 the question.</p> <p>3 Q Right now, with a lightening storm coming</p> <p>4 in, that would be something that you would have --</p> <p>5 you would be able to determine in advance if it was</p> <p>6 coming in, right?</p> <p>7 A Not around D.C. They -- they --</p> <p>8 Q Well, you could check on apps, right?</p> <p>9 A You can. I -- again, if you live in</p> <p>10 D.C., we -- we get storms on a very random basis --</p> <p>11 Q Right.</p> <p>12 A -- throughout the summer, sometimes</p> <p>13 blocks away.</p> <p>14 Q Well --</p> <p>15 A But I take it, yeah, there's -- there's</p> <p>16 some things you might think you can plan with some</p> <p>17 foresight.</p> <p>18 Q But you would have, theoretically, access</p> <p>19 to information that you could check on the presence</p> <p>20 of lightening in the area when you're dropping a</p> <p>21 child off for a play date?</p> <p>22 It'd be something that's not -- not</p>
<p style="text-align: right;">Page 131</p> <p>1 fault parents, and I think they're probably being</p> <p>2 pretty sensible, if they aren't obsessing over</p> <p>3 this, if they aren't asking about it at every</p> <p>4 playmate's date.</p> <p>5 There's an interesting question, if they</p> <p>6 do really care about it, even whether this law is</p> <p>7 well suited to that -- and we can talk about that</p> <p>8 later --</p> <p>9 Q Doctor, do you think it would be</p> <p>10 irrational for a parent to inquire of a playmate</p> <p>11 whether they planned on taking a child inside</p> <p>12 during a lightening storm, when they were dropping</p> <p>13 their son or daughter off at that home? Would that</p> <p>14 be an irrational question to ask?</p> <p>15 A If -- if it's -- if it's -- I think</p> <p>16 psychologically it performs a very useful function.</p> <p>17 And if -- if you had any -- any, for some reason --</p> <p>18 I -- I do think it would be a kind of odd thing to</p> <p>19 ask every parent everywhere and every time. If</p> <p>20 there were some specific concern you had, you knew</p> <p>21 lightening storms were coming in. You knew the</p> <p>22 parents often let the kids play without any</p>	<p style="text-align: right;">Page 133</p> <p>1 restricted in any way, right?</p> <p>2 A Sure.</p> <p>3 Q Right. And same thing with your bathtub</p> <p>4 analogy: You would be able to assume that someone</p> <p>5 has a bathtub in the home; isn't that right, when</p> <p>6 you drop the child off?</p> <p>7 A Well, it depends. Maybe.</p> <p>8 Q Fair to say most -- a large percentage of</p> <p>9 American homes have a bathtub somewhere in the</p> <p>10 home?</p> <p>11 A Probably.</p> <p>12 Q Okay. But with a handgun, a parent</p> <p>13 dropping them off, there's no way they can check a</p> <p>14 weather map to determine if there's a handgun in</p> <p>15 that home, right?</p> <p>16 A Again, the -- the question would be</p> <p>17 whether it would be valuable to know the -- if you</p> <p>18 follow the weather analogy -- again, I think in --</p> <p>19 almost every day in the summer in D.C. there's a</p> <p>20 chance of a -- thunder somewhere.</p> <p>21 And my overriding claim is it would -- it</p> <p>22 would actually probably be a waste of parents' time</p>

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1 to constantly obsess over that potentiality
 2 because, in fact, this is such an extraordinarily
 3 rare event.
 4 That aside, if you had any specific
 5 reason to think that there really, for some -- you
 6 know, there's some tell, something that made you
 7 concerned, we might entertain what's the best way
 8 to get that information that you'd like to know,
 9 whether there is a handgun.
 10 And, you know, as I note in my report,
 11 the peculiar way this disclosure is structured is
 12 it's not clear they would even give you reliable
 13 information about that. So it -- obviously, it
 14 doesn't cover long guns. It doesn't cover those
 15 who have exemptions. It doesn't cover --
 16 Q Right.
 17 A -- you know, all these people. Illegal
 18 guns, which it turns out, as far as we can tell,
 19 account for most accidental shootings that I could
 20 document.
 21 So it -- it might be as bad, actually,
 22 for a parent to think they were -- you know, if

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1 there were some reason for concern -- you think the
 2 lightening storm, proverbial lightening storm might
 3 be a risk. I guess the worst thing would be to --
 4 to look at a weather map that was wrong 50 percent
 5 of the time.
 6 So I -- I -- I take the line of -- of
 7 reasoning here. Again, I think it's probably not
 8 something parents should be systematically
 9 concerned about, that it's --
 10 Q Now, you've -- you've introduced this
 11 concept of obsessed, of obsession, the parents
 12 having an obsession. I believe you said lose
 13 sleep.
 14 I'm wondering, where does that come from?
 15 Because Dr. Sege and -- well, Dr. Sege
 16 and Dr. Hamilton, Professor Hamilton, they don't
 17 talk about an obsession with this fact. They talk
 18 about a parent being concerned, and using this tool
 19 as a way. But you -- you've introduced obsession.
 20 Is that -- where does --
 21 A Oh, I --
 22 Q -- come from?

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1 A -- all I'm suggesting is that it would --
 2 in fact, when you look at statistics, be a little
 3 weird, you know, if you were strictly statistical
 4 reasoners.
 5 I mean on the other side of this, maybe
 6 parents should be a lot more concerned about
 7 bathtubs. Maybe they should be a lot more
 8 concerned about, you know, if there's -- there's
 9 matches in a house. Maybe -- I mean clearly if you
 10 think they should be asking about handguns, they
 11 should be asking about matches and stuff like that,
 12 too, which are much more dangerous. You know,
 13 literally more than -- on magnitude, more
 14 dangerous.
 15 So I -- I think it's reasonable that
 16 parents aren't concerned about dozens, maybe
 17 hundreds, maybe thousands of things that pose --
 18 pose a greater threat to their child. But if they
 19 had a reason for concern, okay. We can ask that
 20 question, whether this law is well tailored to even
 21 address whatever residual concerns they have.
 22 But yes, as a general matter, it strikes

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1 me as something that parents shouldn't particularly
 2 lose sleep about unless there was some particular,
 3 you know, reason that they had to think this was a
 4 particular liability.
 5 MR. CHUCK COOPER: Harris?
 6 MR. DAGUE: Yes?
 7 MR. CHUCK COOPER: I just want you know
 8 that the lunches have arrived.
 9 MR. DAGUE: Okay.
 10 MR. CHUCK COOPER: So if -- you know,
 11 whenever you're at a --
 12 MR. DAGUE: Yeah, I'll try to find a good
 13 spot in a few more minutes.
 14 BY MR. DAGUE:
 15 Q I'm just trying to get a full handle on
 16 this risk indicator concept --
 17 A Yeah.
 18 Q -- you talk about here in paragraph one.
 19 Am I too simplistic to read this as when
 20 you say, The incidents and scenarios that the
 21 authors wish to prevent are so rare that handgun
 22 ownership is not a useful risk indicator for that

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1 purpose?

2 I mean are you suggesting that handgun

3 ownership is not a risk indicator for a domestic

4 violence incident that involves a handgun?

5 Am I --

6 A Well --

7 Q -- reading that --

8 A -- a legal --

9 Q -- improperly?

10 A -- pardon me, legal -- legally disclosed

11 and permitted handgun ownership.

12 Q Uh-huh.

13 A And it turns out, actually -- if you

14 think, you know, I wanna know whether or not

15 somebody is a risk for this -- so we have this one

16 population. We'll call them handgun permit owners.

17 So what's the likelihood they're gonna be involved

18 with this? Well 9,999 out of 10,000 of them

19 will -- will not be.

20 And so it turns out you have this group,

21 99.9 percent of them are not gonna be involved with

22 this sort of stuff. And you wanna say, well, we're

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1 gonna burden them, scrutinize them, because there's

2 this less than .01 percent that if they're abiding

3 by the law, might have -- be more likely to break

4 this other law.

5 So, yeah, my point -- I mean just as a

6 matter of statistics here, do -- does the fact that

7 I know somebody's a handgun owner a good predictor

8 of whether they're going to commit a crime? No.

9 No.

10 Q But is the fact that someone's a handgun

11 owner a good predictor that if they do commit a

12 domestic violence using a handgun, they have a

13 handgun?

14 A A legally owned handgun.

15 Q A legally owned handgun, that's right.

16 But is that a good indicator of the fact

17 that they have a handgun if they commit --

18 A Probably --

19 Q -- that crime?

20 A -- not. I didn't run the numbers for

21 here.

22 Q Sure.

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1 A But you all -- undoubtedly, your state

2 agency could look at this. I would love to know

3 what percentage of handgun homicides were of

4 legally owned and registered handguns. That would

5 be interesting thing for you all to pursue.

6 Q Now, you derive this -- you state in your

7 report 99.99 percent of gun-owning households will

8 not have a child accident or an intimate partner

9 violence -- sorry, a child accidentally killed or an

10 intimate partner violence.

11 Where do you derive those 99 percent

12 figures from? Where is that --

13 A Yeah.

14 Q -- data culled from?

15 A The -- I actually noted in my report.

16 (Witness looked at document). So we

17 have -- I'm not sure where it is.

18 Ah. Page 10.

19 Q Okay.

20 A So we have these -- the number is 16

21 firearms homicides in New York. New York has about

22 19.5 million residents. So that's meaning that out

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1 of those 19 million residents, so 16 out of 19 --

2 out of 1. -- pardon me, 19.5 million residents,

3 there's an incidence rate of .0000008.

4 And you do the -- the simple arithmetic

5 there. And it means that -- I have estimated

6 earlier there's -- from what I could tell from

7 newspaper reports, a few hundred thousand people,

8 apparently, that own these, so --

9 Q Did you look into just deaths, or did you

10 look into injuries on both fronts, domestic

11 violence and accidental childhood injuries --

12 A Yeah.

13 Q -- when you derived those numbers?

14 A So that is for the -- the -- this is

15 specifically in the context of Zeoli's rebuttal.

16 Now, it turns out, if I run the same

17 numbers with the handgun deaths of children, notice

18 those numbers are much, much rarer than the

19 domestic violence homicides. And the -- the --

20 it's a rounding error that isn't gonna move that at

21 all.

22 Q Yeah, what I asked is -- you -- you keep

<p style="text-align: right;">Page 142</p> <p>1 referring to homicides.</p> <p>2 And what I asked is did you -- did you</p> <p>3 look at injuries --</p> <p>4 A Ah.</p> <p>5 Q -- not just homicides?</p> <p>6 A I didn't look at injuries. Dr. Zeoli</p> <p>7 didn't focus on injuries; she focused on homicides.</p> <p>8 And I was rebutting her on that.</p> <p>9 Q Did Dr. Sege look at injuries?</p> <p>10 A He -- I believe he may have mentioned</p> <p>11 this briefly, although he, as well, focused</p> <p>12 primarily on homicides.</p> <p>13 Q In that same section, you talk about cost</p> <p>14 benefit analysis.</p> <p>15 And you referred to that a few times in</p> <p>16 your testimony already, right?</p> <p>17 A Uh-huh.</p> <p>18 Q Now --</p> <p>19 A Yes.</p> <p>20 Q Yes.</p> <p>21 You started to describe what you mean</p> <p>22 generally by cost benefit analysis.</p>	<p style="text-align: right;">Page 144</p> <p>1 right?</p> <p>2 A Yes, the cost I'm evaluating are those</p> <p>3 ones that were identified by the original expert</p> <p>4 witness reports.</p> <p>5 Q Okay. And what's the benefit portion of</p> <p>6 that equation, in your research?</p> <p>7 A Ah. Okay. To clarify, so we're -- it</p> <p>8 depends which side you're looking at, whether</p> <p>9 you're considering the cost of it, so the -- the --</p> <p>10 their claim is that the cost of not having this law</p> <p>11 would be having these homicides. You can flip that</p> <p>12 around and say the benefits of having this law</p> <p>13 would be preventing these homicides.</p> <p>14 So when I initially set out this</p> <p>15 discussion, my -- you think of the law as the</p> <p>16 positive thing here you're -- you're asking about</p> <p>17 The benefit, pun -- putative benefits of that law,</p> <p>18 I take it from their reports, are you save lives,</p> <p>19 that we were just talking about.</p> <p>20 From my perspective, when I think about</p> <p>21 the cost of the law, I'm asking what are the --</p> <p>22 what are the costs to the hundreds of thousands of</p>
<p style="text-align: right;">Page 143</p> <p>1 What is the cost -- define the cost in</p> <p>2 the cost benefit analysis that you conducted in</p> <p>3 this case. What's the --</p> <p>4 A Right.</p> <p>5 Q -- cost mean?</p> <p>6 A So the -- the cost I focused on were the</p> <p>7 costs that the expert witnesses focused on. So</p> <p>8 Dr. Zeoli and Dr. Hamilton, you know, focused their</p> <p>9 reports on this cost of homicide, the -- that was</p> <p>10 the -- the cost that I was myself rebutting.</p> <p>11 The -- and accidentally, I had -- I have</p> <p>12 seen injury rates and -- and injury rates are</p> <p>13 multiples, not orders of magnitude more. So the --</p> <p>14 even looking at injury rates, we're again talking</p> <p>15 a -- a very small deviation from the overall</p> <p>16 picture. So I'm -- I'm happy to take those into</p> <p>17 account. That -- that doesn't change the overall</p> <p>18 analysis.</p> <p>19 Q So the cost in your cost benefit analysis</p> <p>20 is the -- is the number, the statistics and data</p> <p>21 dealing with homicides in the DV context or the</p> <p>22 child unintentional accidental death context,</p>	<p style="text-align: right;">Page 145</p> <p>1 handgun owners who have their -- their privacy</p> <p>2 violated, have their details disclosed.</p> <p>3 So -- so we can -- we can think in the</p> <p>4 broadest terms of the law what are the -- the puted</p> <p>5 (sic) benefits to health and safety, to homicide</p> <p>6 rates and that sort of thing; what are the costs to</p> <p>7 those who are burdened by this disclosure regime.</p> <p>8 Q When you looked at the DV issue -- and</p> <p>9 when I say DV --</p> <p>10 A Domestic violence --</p> <p>11 Q -- you understand that?</p> <p>12 A Yeah.</p> <p>13 Q Okay. Shorthand.</p> <p>14 When you looked at the DV issue, the</p> <p>15 benefits discussed by Dr. Zeoli, you looked at the</p> <p>16 homicide rates with respect to DV incidents?</p> <p>17 A That's correct.</p> <p>18 Q Did you look at -- and I think I asked</p> <p>19 you this -- either the injury rates and/or did you</p> <p>20 look at the rates of nonphysical harms caused by</p> <p>21 weapons, handguns -- excuse me --</p> <p>22 A So --</p>

<p style="text-align: right;">Page 146</p> <p>1 Q -- handguns in the context of DV -- so</p> <p>2 terrorizing, threatening, things of that nature --</p> <p>3 did you look at any data with respect to that?</p> <p>4 A I didn't look at that, nor did I look at</p> <p>5 the benefits of domestic abusees using firearms to</p> <p>6 defend themselves, brandishing firearms to defend</p> <p>7 themselves. I know there's a sub literature on</p> <p>8 that. I -- you know, it's interesting question.</p> <p>9 And it's actually not obvious to me whether the</p> <p>10 cost or benefits are more on either side. I -- I</p> <p>11 know there's many documented cases of people who --</p> <p>12 women who've been abused using handguns in their</p> <p>13 defense.</p> <p>14 So there's tertiary questions here that</p> <p>15 they weren't flagged by the initial reports as</p> <p>16 the -- any of their concerns. Further analysis</p> <p>17 could look at what are the residual benefits to</p> <p>18 domestic abusees, as well as potential, you know,</p> <p>19 injury costs --</p> <p>20 Q But you --</p> <p>21 A -- on either side.</p> <p>22 Q -- would you agree with me that if you</p>	<p style="text-align: right;">Page 148</p> <p>1 equation is, you know, what are the most -- the</p> <p>2 most serious concerns, the ones identified by the</p> <p>3 expert witness reports. Clearly death is a -- is</p> <p>4 an enormous -- you know, something you're not --</p> <p>5 you're not gonna heal from. That's a -- you know,</p> <p>6 a fundamental huge issue. And how do we evaluate</p> <p>7 those. And this is -- this is the fundamental</p> <p>8 thing that I'm weighing.</p> <p>9 You know, it'd be -- it could be</p> <p>10 worthwhile drilling down more of those. You're</p> <p>11 gonna get less resolution, though, the more you try</p> <p>12 to account for things that are much harder to</p> <p>13 measure and register.</p> <p>14 Q Right. But if you're creating the cost</p> <p>15 benefit analysis -- and it is your cost benefit</p> <p>16 analysis that you created through this report -- if</p> <p>17 you didn't include the benefits that were</p> <p>18 specifically highlighted by Dr. Zeoli and Dr. Sege</p> <p>19 and Professor Hamilton's reports, then isn't that</p> <p>20 thumbing the scale on your analysis insofar as</p> <p>21 Dr. Zeoli specifically mentions both homicides,</p> <p>22 injuries, and this concept of threat, which you</p>
<p style="text-align: right;">Page 147</p> <p>1 set up a cost benefit scale, the only value to the</p> <p>2 scale is if good information goes into the scale,</p> <p>3 correct?</p> <p>4 A It's a question of priorities importance.</p> <p>5 Death seems to me the biggest question here.</p> <p>6 Q Right.</p> <p>7 A How many deaths can you prevent is a big,</p> <p>8 important question. There are injuries. Again,</p> <p>9 now you might get, you know, serious injuries,</p> <p>10 slight injuries, fear. The questions get more</p> <p>11 complicated: How you gonna value, how you're gonna</p> <p>12 weigh those, how you gonna get the quality of the</p> <p>13 discrimination that's worthwhile.</p> <p>14 So, yeah, there's interesting questions</p> <p>15 to be pursued here. That's --</p> <p>16 Q But --</p> <p>17 A -- again, and it's on both sides. So</p> <p>18 there's a certain symmetry here. I don't know all</p> <p>19 the benefits of handgun ownership to abusees. I</p> <p>20 don't include that. Now, that might be difficult</p> <p>21 to get to, again difficult to weigh.</p> <p>22 But what I wanna make sure is -- in this</p>	<p style="text-align: right;">Page 149</p> <p>1 discuss is the threats that cause, you know,</p> <p>2 emotional damages to victims of domestic violence,</p> <p>3 and Dr. Sege specifically addresses injuries?</p> <p>4 So if you take those out of the equation,</p> <p>5 are you, like I said, thumbing the scale --</p> <p>6 A No, no --</p> <p>7 Q -- on your cost --</p> <p>8 A -- no.</p> <p>9 Q -- benefit scale?</p> <p>10 A No. Just to be clear, the things you're</p> <p>11 talking about, first of all, pale in comparison to</p> <p>12 death.</p> <p>13 Q In -- in what regard, though, pale in</p> <p>14 comparison? Severity or --</p> <p>15 A Yes, I --</p> <p>16 Q -- finality?</p> <p>17 A -- I -- if -- if I give you the question:</p> <p>18 Would you rather have a loved one killed or have a</p> <p>19 loved one injured?, is that a real -- it strikes me</p> <p>20 that that's -- we think severity importance, death</p> <p>21 is more serious than injury.</p> <p>22 We have to consider if we're gonna take</p>

<p style="text-align: right;">Page 150</p> <p>1 an injury, how are you discriminating different</p> <p>2 types of injury, different severity. But the --</p> <p>3 the larger picture here is these are -- these are</p> <p>4 small error bars around a really, really, really</p> <p>5 small number to begin with.</p> <p>6 So we can even hypothesize -- again,</p> <p>7 we're not taking into account -- the point is,</p> <p>8 there's gonna be error on both sides. And we're</p> <p>9 not taking in account the value as defensive uses</p> <p>10 of firearms by -- by domestic abusees. So we can</p> <p>11 stipulate there's gonna be some err on either side.</p> <p>12 It may be 99.9993 or 92 or 97.</p> <p>13 I mean you're arguing here about, you</p> <p>14 know, can we get more resolution on this extremely</p> <p>15 small number, which the -- the question is, you</p> <p>16 know, how -- is -- is it gonna tip the scale of the</p> <p>17 larger analysis. And --</p> <p>18 Q But how do you know that?</p> <p>19 I mean where is your data that -- where</p> <p>20 is the data in this report that suggests that that</p> <p>21 number would only move from 99.99 to 99.93 if you</p> <p>22 included all of the harms discussed by Zeoli and</p>	<p style="text-align: right;">Page 152</p> <p>1 fair?</p> <p>2 A I -- I looked it, and deemed this</p> <p>3 inconsequential. And if we're talking about</p> <p>4 multiple again, not orders of magnitude.</p> <p>5 Q Okay. And then just to be clear, though,</p> <p>6 when you throw out numbers of 99.93 or 94, that's</p> <p>7 just a guess on your part; you don't have any firm</p> <p>8 data at this point to support that --</p> <p>9 A No --</p> <p>10 Q -- right?</p> <p>11 A -- no, even -- even if you accept the --</p> <p>12 the -- if you wanna include again injuries of</p> <p>13 unknown severity, which is even what Dr. Sege's</p> <p>14 publicly available data shows, so, you know, you</p> <p>15 can have somebody grazed. You can have somebody</p> <p>16 lose an arm. And it's a question of, again, how</p> <p>17 you're gonna weigh that all consistently.</p> <p>18 The -- even if you're gonna accept</p> <p>19 multiples there, you're still talking -- I mean I</p> <p>20 had to round -- I mean it's nine -- it's -- it's</p> <p>21 actually 99.999 -- something like 4. You're not</p> <p>22 gonna -- you're not gonna get the movement even</p>
<p style="text-align: right;">Page 151</p> <p>1 Sege?</p> <p>2 I mean do you have data to support that</p> <p>3 figure, or is that just a guess at this point on</p> <p>4 your part because you haven't looked at it?</p> <p>5 A I would love to get access to that data,</p> <p>6 which New York State actually collects but doesn't</p> <p>7 permit the public to access. So that would be --</p> <p>8 that would be wonderful, even as a researcher, to</p> <p>9 obtain that. But New York State has decided that</p> <p>10 that sort of contact data regarding domestic</p> <p>11 abusers shouldn't be publicly available. Because,</p> <p>12 apparently, there's a privacy interest that abusers</p> <p>13 have. So I can't get access to that data.</p> <p>14 Incidentally, though, the court's can,</p> <p>15 which also domestic abusees can in the context of</p> <p>16 the court hearings.</p> <p>17 Q Well, Dr. Sege accessed data with respect</p> <p>18 to injuries and with respect to injuries --</p> <p>19 A Over children.</p> <p>20 Q -- accidental guns over children. So</p> <p>21 that information, at least, was accessible.</p> <p>22 But you didn't look at that, is that</p>	<p style="text-align: right;">Page 153</p> <p>1 with that statistic, if you're adding in, you know,</p> <p>2 those multiples that are injured or whatnot.</p> <p>3 Q Well --</p> <p>4 A So that's what -- what gives me</p> <p>5 extraordinary confidence in these estimates, is</p> <p>6 we're -- we're talking about -- you're talking</p> <p>7 about rounding errors. The overall picture is the</p> <p>8 same.</p> <p>9 Q Why not include them, if the rounding</p> <p>10 errors for -- at least for completeness of your</p> <p>11 analysis?</p> <p>12 A The -- the precisely the problem is it's</p> <p>13 very difficult to evaluate. It's difficult both to</p> <p>14 evaluate the defensive value of these guns to</p> <p>15 domestic abusees. It's also difficult to evaluate</p> <p>16 the severity of injury to know if we're comparing</p> <p>17 apples to oranges. Death count is pretty clear.</p> <p>18 And it's what the opposing expert and supports</p> <p>19 focused on. It was the -- the main claim that they</p> <p>20 made.</p> <p>21 And it turns out, upon scrutiny, not only</p> <p>22 are the numbers a little lower than some of them</p>

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1 suggested, but when you look at the larger context,
 2 we're talking about vanishing these small number of
 3 incidents in the context of, you know, many other
 4 risky things that we deal with in everyday life.
 5 Q Did you consider the data that over
 6 20,000 American children under 19 present for care
 7 in an emergency room for a firearm-related injury
 8 on an annual basis?
 9 A Yeah, and what was the age again? I just
 10 want to hear that.
 11 Q Under 19.
 12 A Under 19. No. And that's partly
 13 because -- well, it's a difficult question, how to
 14 consider an 18-year-old who goes to the emergency
 15 room for a gunshot or for gun violence.
 16 Q Uh-huh.
 17 A We're -- we're not talking about -- well,
 18 we could be talking about many things at that
 19 point.
 20 Q Okay. And when you talk about severity
 21 of those potential injuries, did you ever encounter
 22 a statistic that shows that over 50 percent of

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1 children who are hospitalized with firearm-related
 2 injuries are discharged from the hospital with a
 3 permanent disability? Is that something you
 4 considered?
 5 A Nope.
 6 Q Okay. And when you talk about the
 7 magnitude -- and I believe you posed the question
 8 of, you know, would you rather a -- someone -- a
 9 loved one be -- sustain a fatality or an injury,
 10 did you contemplate the cost and/or possibility of
 11 a life-long disability when you did your statistics
 12 and considerations for this report?
 13 A No. I focused on deaths.
 14 Q Okay. And we can agree, though, that
 15 while death is certainly more final, a permanent
 16 disability is fairly severe as well, with orders of
 17 magnitude, correct?
 18 A It is -- permanent disability is
 19 certainly a bad thing.
 20 Q Okay.
 21 A Not only did I not account for that, I
 22 didn't account for the value of definitive use of

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1 firearms, which, of course, would be a big thing to
 2 consider on the other side. But given the
 3 difficulties of estimating that and vetting
 4 those -- that with great accuracy, I decided not to
 5 put that on the scale on the other side as well.
 6 Q Right. What I'm wondering, Doctor, is
 7 that this is your analysis. You're the one who
 8 created the cost benefit analysis paradigm.
 9 So that was your decision not to include
 10 the defensive values, correct?
 11 A Yeah, precisely for the reasons I just
 12 said.
 13 Q Okay.
 14 A If there's -- if there's enormous
 15 difficulty and controversy about measuring, but --
 16 but we have some confidence that we at least
 17 understand the order of magnitude that could be on
 18 either side, this is not a -- a concern at all for
 19 my overall --
 20 Q Okay.
 21 A -- analysis and conclusions.
 22 Q So just to be clear, it was your decision

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1 to limit the benefit side of the equation to just
 2 fatalities in both DV and the pediatric realm, and
 3 to exclude injuries and/or potentially other
 4 nonphysical injuries in the DV context, correct?
 5 A It was indeed my decision to focus on
 6 facilities, which are -- are measurable and
 7 transparent, and to exclude both the potential
 8 positive value of the defensive use of firearm as
 9 well as potential negative value of -- of injuries
 10 that are accounted for in different ways.
 11 Q Okay. And just to be clear, are you not
 12 a -- do you consider an expert in domestic
 13 violence?
 14 A No.
 15 Q Okay. Are you familiar with the
 16 psychological, nonphysical ramifications from
 17 domestic violence at all?
 18 A I'm aware there's a literature that
 19 examines it.
 20 Q Okay. And are you aware that threats
 21 and/or badgering have a psychological harm to
 22 domestic violence victims as well as physical

<p style="text-align: right;">Page 158</p> <p>1 injury?</p> <p>2 A I am.</p> <p>3 Q Okay. Now, you --</p> <p>4 MR. DAGUE: And I'll be done in a few</p> <p>5 minutes.</p> <p>6 MS. CONNELL: I was going to say, the</p> <p>7 poor guys over there.</p> <p>8 MR. DAGUE: I know. I know. But I have</p> <p>9 one -- thanks.</p> <p>10 BY MR. DAGUE:</p> <p>11 Q Now, you proposed this cost benefit</p> <p>12 analysis.</p> <p>13 And what I was wondering is by proposing</p> <p>14 that, how many incidents of domestic violence</p> <p>15 involving a licensed handgun would you need to see</p> <p>16 to determine that the benefits outweigh the costs,</p> <p>17 in real numbers?</p> <p>18 A It depends on many other things. I'd</p> <p>19 need to see what regime was enforcing that. I'd</p> <p>20 need to see -- I mean how -- there's a lot of other</p> <p>21 questions that would go into figuring, to making</p> <p>22 that determination.</p>	<p style="text-align: right;">Page 160</p> <p>1 So, again, I try to think analogously,</p> <p>2 like how many lives could we save if we required</p> <p>3 everybody who has a -- an STD that's communicable</p> <p>4 to be publicly registered. That number's probably</p> <p>5 huge. So I'm just trying to think, you know,</p> <p>6 what -- we don't allow that. But clearly -- I</p> <p>7 mean, you know, at a certain time in certain</p> <p>8 cities, certain places, that might have saved, oh,</p> <p>9 I don't know, ten -- a hundred -- hundreds, maybe</p> <p>10 thousands, tens of thousands of lives.</p> <p>11 So I'd -- I'd have to think about it</p> <p>12 because -- yeah, there's a lot of invasions of</p> <p>13 privacy that I think could potentially save a lot</p> <p>14 of lives. I'm not sure how many people, for</p> <p>15 example, I'd -- like how many HIV patients I would</p> <p>16 require to be publicly disclosed if I knew it would</p> <p>17 save, you know, "X" many lives. I'd have to think,</p> <p>18 give more thought to that.</p> <p>19 Q Doctor, I appreciate the discussion on</p> <p>20 STDs and -- and AIDS, but -- but I'm talking about</p> <p>21 this case. And I'm --</p> <p>22 A Uh-huh.</p>
<p style="text-align: right;">Page 159</p> <p>1 Q Yeah, but, Doctor, you've proposed the</p> <p>2 cost benefit analysis. And you've said that you</p> <p>3 have made a determination that this law doesn't tip</p> <p>4 the benefits above the cost.</p> <p>5 So what I'm asking you is -- and you say</p> <p>6 99 --</p> <p>7 A Ah.</p> <p>8 Q -- .99 --</p> <p>9 A Yeah.</p> <p>10 Q -- what I'm wondering is where's the line</p> <p>11 and --</p> <p>12 A Oh, yeah, well --</p> <p>13 Q -- what's the percentage?</p> <p>14 What's the percentage?</p> <p>15 A The number, or the percentage?</p> <p>16 Q Well, what's the percentage?</p> <p>17 What would you have to see for you to</p> <p>18 be -- determine from a statistical data expertise</p> <p>19 that the benefit outweighs the cost?</p> <p>20 A Well, we actually haven't talked yet</p> <p>21 about the -- the ben -- the other side; that is,</p> <p>22 what's -- what's at stake.</p>	<p style="text-align: right;">Page 161</p> <p>1 Q -- talking about your proposed cost</p> <p>2 benefit and your data.</p> <p>3 And what I'm wondering is you have opined</p> <p>4 that the cost does not out -- the benefit does not</p> <p>5 outweigh --</p> <p>6 A Uh-huh.</p> <p>7 Q -- the benefits articulated by Zeoli,</p> <p>8 Sege, and Hamilton do not outweigh the costs. And</p> <p>9 what I'm wondering is by proposing that, you must</p> <p>10 have a line where you believe the benefits outweigh</p> <p>11 the cost.</p> <p>12 And what is that line that the state</p> <p>13 would have to hit for you to change your opinion?</p> <p>14 A Sure. So if it -- if it saved more lives</p> <p>15 than had died from AIDS over the last 30 years,</p> <p>16 then it would at least be above the standard that</p> <p>17 we've already said. It at least has to exceed that</p> <p>18 standard.</p> <p>19 Q Okay.</p> <p>20 A So that would be, you know --</p> <p>21 Q Okay.</p> <p>22 A -- significant. But we've already said</p>

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1 we won't allow, say, in other courses of the law,
 2 invasions of privacy to save that many people. So
 3 it would have to at least exceed that, I would
 4 think, if we're gonna be consistent legally --
 5 Q Okay.
 6 A -- thinking about the cost and benefits
 7 of privacy invasion.
 8 Q Okay. So that's the line, that the line
 9 is over the last 30 years, the State would have
 10 to --
 11 A Now, that's.
 12 Q -- demonstrate --
 13 A -- on a national level.
 14 Q On a national level?
 15 A Yeah, I think, yes.
 16 Q Okay. So in order for you to change your
 17 opinion, the State would have to demonstrate that
 18 on a national level that more people have died from
 19 domestic -- just died -- from domestic violence
 20 and/or unintentional gun deaths of children than
 21 how many died from AIDS over the last 30 years to
 22 justify this law, is that fair?

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1 A I would say at least -- so this is a -- a
 2 lower boundary, at least, given our existing
 3 legal -- yeah.
 4 Q Okay.
 5 A However, just be clear here, there's also
 6 a claim -- and this would have to be substantiated
 7 as well -- that disclosure actually prevented these
 8 things.
 9 Q Right.
 10 A So I -- we're assuming we're stipulating
 11 for this thought experiment that say public
 12 registry of those with a communicable disease would
 13 help people know not to say engage in behaviors
 14 that might transmit that unwittingly. And so,
 15 again, that's a -- that's a big caveat.
 16 Q Right.
 17 A But, again, I would think, you know,
 18 that's a good public policy question, when there's
 19 all these other areas of our law where we -- we --
 20 it doesn't even concern us that we don't allow
 21 invasions of privacy, even though it -- it seems
 22 like it would save all these lives.

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1 And so, again, I'm saying as a minimum
 2 standard, well, at least would have to be bigger
 3 than, because you've already established a
 4 pretty -- you know, a strong precedent there.
 5 Q Okay.
 6 MR. DAGUE: All right. I've kept you
 7 guys from your lunch long enough. Let's take -- do
 8 you want to do a half hour, come back at 1:00,
 9 1:05?
 10 MR. DAVIS COOPER: We're fine with that.
 11 (Whereupon, at 12:34 p.m., a
 12 luncheon recess was taken.)
 13 A F T E R N O O N S E S S I O N
 14 (1:10 p.m.)
 15 Whereupon,
 16 WILLIAM ENGLISH, Ph.D.,
 17 was recalled as the witness and, having been
 18 previously sworn, was examined and testified
 19 further as follows:
 20 EXAMINATION BY COUNSEL FOR DEFENDANTS
 21 CONTINUED
 22 MR. DAGUE: Okay. Back on the record.

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1 BY MR. DAGUE:
 2 Q Welcome back, Doctor.
 3 A Thank you.
 4 Q I'm going to direct your attention to
 5 page 2 of your report, Defendants' Exhibit 1. And
 6 looking at that first paragraph, the paragraph that
 7 begins "finally."
 8 A Uh-huh.
 9 Q So in the second sentence you say, First,
 10 there are many indicators of risk that are much
 11 more predictive of the outcomes that these authors
 12 want to avoid.
 13 Do you see that?
 14 A Yes.
 15 Q All right. And I wanted to ask you a
 16 couple follow-ups on that.
 17 What are the many indicators that you
 18 reference here?
 19 A Yeah, so harking back to where we left
 20 off, so disease, that could be an indicator of
 21 risk. You know, people have disease, people who
 22 haven't been vaccinated.

<p style="text-align: right;">Page 166</p> <p>1 Q I -- yeah.</p> <p>2 A And just to finish this, the outcomes</p> <p>3 these authors want to avoid. They want to avoid --</p> <p>4 so outcomes these authors want to avoid is how,</p> <p>5 that -- the sentence proceeds. Death is a bad</p> <p>6 thing. We want to avoid a death. Okay. There are</p> <p>7 many indicators of risk, things like disease</p> <p>8 indicators that are pretty predictive of some</p> <p>9 really bad out -- health outcomes, death, you know,</p> <p>10 injury, disease. And yet even in those cases where</p> <p>11 the risks are much more -- are higher and more</p> <p>12 directly linked, the State does not make a matter</p> <p>13 of public record.</p> <p>14 Q Okay. Let's dig in on this a little bit</p> <p>15 more.</p> <p>16 So you're saying that there are other</p> <p>17 indicators of risk other than handgun -- licensed</p> <p>18 handgun ownership that are more predictive of the</p> <p>19 outcomes of these authors --</p> <p>20 A Uh-huh.</p> <p>21 Q -- Zeoli, Hamilton, Sege -- want to</p> <p>22 avoid --</p>	<p style="text-align: right;">Page 168</p> <p>1 it's interesting that even on matters of risk that</p> <p>2 are highly predictive of those, there are many</p> <p>3 instances where we believe they -- we shouldn't</p> <p>4 violate privacy to try to mitigate those risks,</p> <p>5 because we think privacy has a -- a value of</p> <p>6 importance.</p> <p>7 Q Okay. And so just so I'm clear, we're</p> <p>8 talking about this is -- you're making a general</p> <p>9 statement here as to risk indicators. You're</p> <p>10 not -- you're not saying that there are more apt or</p> <p>11 relevant risk indicators that the authors of the</p> <p>12 reports didn't look at that equal or result in</p> <p>13 these outcomes they discuss.</p> <p>14 That's not what you're saying?</p> <p>15 A I -- you know, it's not a narrowly</p> <p>16 construed -- I'm not talking just about gun stuff</p> <p>17 here.</p> <p>18 Q Oh.</p> <p>19 A I'm saying as a general matter, there's</p> <p>20 all sorts of risky things in our society.</p> <p>21 Q Okay.</p> <p>22 A Clearly, these people, you know, care</p>
<p style="text-align: right;">Page 167</p> <p>1 A Yes.</p> <p>2 Q -- right?</p> <p>3 So you said disease, but I -- is that a</p> <p>4 mis -- is that a misnomer?</p> <p>5 I mean is disease -- disease is -- would</p> <p>6 disease be a risk indicator in this context of</p> <p>7 avoiding unintentional shootings or avoiding use of</p> <p>8 handguns for domestic violence?</p> <p>9 A Just to be clear, this may be a</p> <p>10 misunderstanding of rhetoric here.</p> <p>11 Q Yeah.</p> <p>12 A I'm saying as a general matter, there's a</p> <p>13 lot of things these authors would probably agree we</p> <p>14 want to avoid. Some of them are specifically, you</p> <p>15 know, things their reports are aimed at. You know,</p> <p>16 death and injury is -- Sege's a doctor. He</p> <p>17 probably wants to prevent disease. But that's --</p> <p>18 maybe -- it's you're reading less -- more into this</p> <p>19 than I intended.</p> <p>20 I'm saying clearly there's also the bad</p> <p>21 outcomes these authors agree to, sometimes</p> <p>22 explicitly, in the very reports I'm citing. And</p>	<p style="text-align: right;">Page 169</p> <p>1 about death and injury. And for some reason, we --</p> <p>2 we don't violate privacy even when it might be</p> <p>3 useful to prevent some of those.</p> <p>4 Q Okay. Now, you mentioned disease.</p> <p>5 Is this a reference to your discussion of</p> <p>6 AIDS and STDs?</p> <p>7 Is that the -- are you thinking the same</p> <p>8 concept there?</p> <p>9 A Same concept. I mean you can think about</p> <p>10 it in terms of vaccines. You can -- I mean you can</p> <p>11 think about quarantines and flu season. You know,</p> <p>12 there's many, many ways --</p> <p>13 Q Right.</p> <p>14 A -- in which you could think of public</p> <p>15 health concern that we have that we protect --</p> <p>16 Q Now --</p> <p>17 A -- privacy.</p> <p>18 Q -- wouldn't you agree with me that</p> <p>19 applying your cost benefit analysis in these -- in</p> <p>20 quarantines, that the -- the cost of a quarantine</p> <p>21 would be considerably greater than the cost at</p> <p>22 issue here, which is the public availability</p>

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1 through FOIL of individual's names?

2 A Just be -- I'm -- I'm listing many sorts

3 of examples here. I'm --

4 Q Yeah, that's --

5 A -- just giving --

6 Q -- fine --

7 A -- you a --

8 Q -- I'm just -- I'm just digging in on one

9 them, which you --

10 A It would depend on the nature of the

11 quarantine.

12 Q Okay. Would you generally -- would you

13 ever find a physical quarantine of an individual

14 less restrictive than their name being publicly

15 available through FOIL?

16 Can you think of a situation where that

17 would happen?

18 A I'd have to think about the details of

19 it. Generally and for the most part, physical

20 restraint, I would think would be worse than

21 publishing names.

22 Q Now, these risk -- these indicators of

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1 risk or risk indicators that you talk about, are

2 all of those addressable through some sort of

3 public disclosure?

4 The examples --

5 A So --

6 Q -- that you're --

7 A -- so I --

8 Q -- thinking of.

9 A -- think, you know, some are, so --

10 Q All right.

11 A Yeah, so my point -- my point is as a

12 general matter here. Again, I'm just saying

13 there's a lot of that outcome that we'd want to

14 avoid. There's various risk indicators. We can

15 think of different ways of dealing with that risk.

16 We seem to have high bars. Certainly there are

17 some instances where disclosure might be a way to

18 mitigate that.

19 Q Uh-huh.

20 A We -- we don't pursue.

21 Q Do you find -- and you've mentioned AIDS

22 or -- or STDs.

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1 Do you find, as a general matter, the

2 concept of publicizing individual's names based

3 upon their medical condition more or less

4 problematic than publicizing an individual's name

5 who owns a gun --

6 A Well --

7 Q -- via FOIL?

8 A -- it would depend.

9 Q Okay. What types of factors would it

10 depend upon?

11 A Oh, there's type of medical condition,

12 how communicable it is, whether somebody had

13 responsibility in acquiring it, or whether it's

14 curable. I mean that's just the tip of the

15 iceberg. I'm -- I -- I could -- possibly many,

16 many factors --

17 Q Right.

18 A -- would influence that kind of decision.

19 Q Now, is there a fundamental distinction

20 between those two comparators, in the fact that --

21 say for STDs, or mental health, as you mention in

22 your report, that those are generally nonvoluntary

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1 or things that you obtain non-voluntarily versus a

2 gun, which is a voluntary action to purchase?

3 A Well, I mean STDs I suppose it begs the

4 question, you know. Potentially -- I mean you --

5 you could make it into something that you'd have

6 more voluntary control over precisely through

7 disclosure. And, you know, again, you could

8 imagine many different circumstances, some of which

9 there is some foreknowledge, some which there is

10 accepted risk.

11 So -- so, yeah, I think the -- and same

12 thing with mental illness. It turn -- I mean much

13 of it's inherited. There's also things one can do

14 to develop psychosis, you know, drugs and whatever.

15 So clearly there's a variety of reasons somebody

16 might be in -- in these various states. But the --

17 not always the obvious or the case that

18 voluntariness distinguishes it.

19 Q Do you find that the infringement in

20 privacy would be greater for publicizing

21 individuals who have a nonvoluntary medical

22 condition than for publicizing names of individuals

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1 who have voluntarily decided to purchase a handgun?

2 A It depends. It depends. Like I think --

3 I mean, again, I'm trying to think of test cases,

4 analogies. You know, it's -- somebody could, you

5 know, voluntarily get an abortion, I suppose.

6 Q Let me pose a specific hypothetical.

7 A Uh-huh.

8 Q Maybe that'll help.

9 Would you find that publicizing the name

10 of an individual who has schizophrenia and lives in

11 the community is more of an infringement on privacy

12 than publicizing the name of someone who

13 voluntarily decided to apply for a handgun permit

14 and purchase a handgun?

15 A Again, I might like a few more details

16 about who this person is concerning why -- what --

17 their group home, what's going on there. But as a

18 general matter, I would say both strike me as

19 inappropriate. I'm -- I'm not sure how to rank

20 their inappropriateness.

21 Q Sure.

22 A But without further information, it's

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1 hard to --

2 Q Okay.

3 A -- you know, compare what -- compare

4 these.

5 Q So do you believe that the voluntary or

6 involuntary nature of the risk factor has any

7 bearing on the disclosure of the factor?

8 A Yeah, it strikes me, as a general

9 principal, it's -- it's totally unclear. I, you

10 know, can voluntarily not vaccinate my kids. I

11 suppose that's a choice. You can also imagine that

12 being very useful information for public health

13 officials. And that can also be very embarrassing

14 from a -- a public opinion perspective.

15 You know, there's various others'

16 behaviors that are -- clearly are voluntary.

17 Decisions to get an abortion are voluntary. It

18 also might have a variety of implications for

19 public, you know, shame or -- or scrutiny. And so

20 I -- the voluntariness isn't obvious to me how

21 that -- I think it -- it's just gonna be a

22 case-by-case situation.

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1 Q Now, you say that there are many

2 indicators of risk that are much more predictive of

3 the outcomes that the authors want to avoid, but

4 the State does not, as matter of public policy,

5 make those public.

6 Is it your position that because there

7 are other -- there are risk factors that the State

8 doesn't make public that the State shouldn't make

9 any risk factors public?

10 A No, I'm not making a -- a claim that

11 that's -- it's that narrow. I'm observing,

12 however, that we clearly do protect privacy in all

13 these other domains. And as a standard, it's worth

14 comparing what's -- what's different or the same.

15 And it just strikes me as -- as something worth

16 consideration.

17 What is the standard upon which we think

18 it's okay to, you know, invade privacy in various

19 ways? How are those to be weighed off?

20 And -- and I'm just observing that there

21 are all sorts of places where we seem to have very

22 high standards in that regard.

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1 Q Right. But the ones I had asked you

2 about, the other -- the other areas that we -- that

3 we believe that New York State or other governments

4 protect, despite being a risk factor, you would

5 agree with me that those -- there are distinctions

6 between those and ownership of a handgun?

7 A No. What do you -- what --

8 Q Okay.

9 A -- what do you mean?

10 Q So that --

11 A And -- and maybe, yeah --

12 Q Yeah.

13 A -- I'm just not sure.

14 Q Right.

15 A I haven't heard any yet.

16 Q The ones you talked about, specifically

17 mental health and STDs --

18 A And vaccines and abortion.

19 Q Right, but let's just focus on those two

20 for now. I'll get to --

21 A Okay.

22 Q -- vaccines --

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1 A Sure.

2 Q -- and abortion.

3 But you would agree with me there are

4 fundamental distinctions on both sides between

5 having a mental health issue and voluntarily owning

6 a gun, right?

7 I mean there are distinctions; these are

8 not necessarily analogous privacy interests; is

9 that right?

10 A No, it's not clear at all. I mean the --

11 the underlying question is in what sense are they

12 analogous and what sense are they not. I mean, you

13 know, by definition, they -- these are different

14 topics. So that's sort of a truism, a tautology.

15 The question now is in what sense are they similar

16 and in what sense are they different.

17 You know, and -- and the claim is here is

18 that there's many things, at least on this question

19 of threats to public health and safety. In fact,

20 the -- the concerns are more severe. And so I

21 guess the -- it begs a question of: In what

22 respects do you think the privacy interests are

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1 different? And it's -- it's not clear to me on the

2 face of it, from anything you've said, that these

3 are different in a relevant way.

4 I mean the voluntary thing, I think that

5 doesn't go very deep or far. I don't know if

6 there's something else you've touched on. Maybe

7 I've missed it. But it's -- no, it's not obvious

8 to me at all that these aren't -- are not

9 appropriate comparisons.

10 Q Okay. So your point with risk factors

11 is -- would you agree that just because we, as a

12 society, cannot legislate to avoid all risk factors

13 doesn't mean that we don't attempt to legislate to

14 avoid some risk factors; is that fair?

15 A At a -- at a level distraction, yeah, the

16 argument needs to be made how severe are the

17 consequence, what can we prevent through this, and

18 what are the downsides or costs. And it just

19 strikes me that there's a host of instances where

20 privacy is very important, very sacrosanct,

21 protected in law.

22 And so the -- I guess the -- the prima

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1 facie question is are these many examples in

2 context, why would privacy not be important in this

3 context.

4 Q In that same section, that same paragraph

5 on 2, you go on to, I think, articulate what you

6 just said somewhat, when you state, The state has

7 clearly recognized that the potential benefits of

8 publicizing sensitive information must be weighed

9 against the cost to privacy, and our legal system

10 has set a high bar in that regard.

11 Do you see that?

12 A Yes.

13 Q What's the high bar that you're talking

14 about there?

15 A I mean the -- the examples I've just

16 mentioned, that it -- it's interesting there, you

17 know. You almost have to, you know, think about --

18 well -- well, if you think about the range of

19 things that we actually might be able to protect if

20 we disclosed, you know, all sorts of issues of

21 privacy.

22 I would love to know how much alcohol

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1 somebody bought last week. I'm sure that would

2 predict all sorts of risk factors. I'd like to

3 know if they smoked. I'd like to know -- you know,

4 you -- as a -- you know, somebody who works in

5 public policy, I could come up with a long list of

6 things which are -- we know it's -- normally take

7 for granted that are matters of privacy, that you

8 could imagine if it were open to public disclosure,

9 we could have all sorts of nice benefits that would

10 allow us to -- to scrutinize, penalize, you know,

11 avoid others and maybe different -- so --

12 Q Let me dig in, because I'm not -- maybe I

13 just didn't articulate what I was looking for.

14 A Uh-huh.

15 Q It may be a little more simpler even.

16 When you say the legal system has set a

17 high bar, are you referencing a legal standard?

18 Are you referencing a Supreme Court precedent?

19 What are you -- what are you talking

20 about when we talk about a legal system high bar?

21 A Sure. Yeah. So in -- in two senses. In

22 a colloquial sense, generally for the most part,

<p style="text-align: right;">Page 182</p> <p>1 I'd say American citizens think highly of their 2 right to privacy. 3 In a more legal context, Supreme Court on 4 one -- more than one decision has viewed rights of 5 privacy as actually -- I mean windows into -- you 6 know, even enormous areas of law. You can think of 7 the right to choose, the right to contraception. 8 Fundamental aspects of law that they recognize as 9 the privacy interest being the legal wedge, the, as 10 it were, normative, ethical legal argument that has 11 propped up those legal decisions. 12 So it's like colloquially Americans care 13 about privacy. You know, obviously, this is 14 figured into, you know, different legal precedents 15 and decisions. 16 The -- my claim is, I think, probably -- 17 you know, it makes more sense to consider in just 18 as the general sense. I'd say there's a -- an 19 expectation that many American citizens take for 20 granted that their privacy interests outweigh a lot 21 of states' interests when it comes to regulating 22 their personal behavior.</p>	<p style="text-align: right;">Page 184</p> <p>1 I mean that's fair, right? 2 A Of course. 3 Q Okay. And the law would value some 4 privacy rights over others, right? 5 A Sure. 6 Q Okay. So when you talk about this high 7 bar in the legal system, you're talking about that 8 more colloquially; you're not referencing a 9 particular level of scrutiny or anything in that 10 regard, right? 11 A I -- I did not intend it with any -- a 12 particular legal meaning. Actually, just add that 13 also being familiar with all sorts of data requests 14 from government, even stewards of government 15 information take privacy in the research context 16 extremely seriously. And so there's all -- I mean 17 they're also very high -- I mean very specific 18 legal standards within research ethics that protect 19 privacy as well. 20 Q You go on in that paragraph to talk 21 about -- you say, Second, the law is not well 22 tailored to the supposed aims articulated by these</p>
<p style="text-align: right;">Page 183</p> <p>1 Q You would agree with me, though, that the 2 law treats privacy in all contexts differently, 3 though; is that fair? 4 A As I -- yeah, as I mentioned in earlier 5 discussions, I -- I always want to hear about the 6 context -- 7 Q Right. 8 A -- before I can make a clear judgment. 9 Q But you would agree with me that there's 10 no one foundational law of privacy that applies 11 universally to every privacy interest; is that 12 right? 13 A That seems to be true of almost every 14 legal concept -- 15 Q Right. 16 A -- you've ever articulated. 17 Q But you have a lesser privacy interest in 18 say your garbage than you do in your healthcare; is 19 that fair? 20 A Potentially, yeah. 21 Q Okay. And so the law does recognize 22 distinctions between application of privacy rights;</p>	<p style="text-align: right;">Page 185</p> <p>1 reports. 2 Do you see that? 3 A Yep. 4 Q Now, what do you mean by well tailored in 5 that context? 6 A Yeah. So as I have already argued, I 7 think that it would be ill-advised for parents to 8 be particularly concerned about what are 9 extraordinarily rare occurrences and risks. 10 However, even if a parent had some reason, some 11 particular concern about a playmate or -- and they 12 really wanted to know whether a gun was in a 13 household, then the question is: Well, what's 14 the -- the best way for them to obtain that 15 information? 16 And, conspicuously, this law in question 17 doesn't cover long guns, which as I note later in 18 the report -- actually, in the Northeast in 19 particular -- injure children, for example, at much 20 higher rates than handguns. And, again, that's in 21 many Northeastern states that don't share -- share 22 New York's law.</p>

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1 And it's a case it's not gonna track
 2 people who have exemptions. It's not gonna track
 3 illegal firearms, as I document also in this
 4 shortly later. Many of the New York incidents, if
 5 not most, if not all, involve illegal -- I'd say
 6 most involve illegal firearms.

7 So the law -- if -- if this were its
 8 purpose, you know, either what Dr. Zeoli or
 9 Dr. Sege or Dr. Hamilton says, it doesn't seem like
 10 as our legislature -- this doesn't seem how the --
 11 how -- that the law was crafted in a way that would
 12 accomplish that aim in a most comprehensive and
 13 effective manner.

14 Meanwhile, I think that -- and this is in
 15 the background -- are there other ways to get to
 16 the information, concerns expressed particularly by
 17 Dr. Zeoli and Dr. Sege. And in both cases, it
 18 seems like yes. There actually -- if you were
 19 really concerned -- and, again, I think it's
 20 extremely rare that there are genuine concerns
 21 here. If you were concerned, there are other ways
 22 to get at this information with great reliability,

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1 without public disclosure, and in more informative
 2 manner.

3 Q Would you be more comfortable with this
 4 law if it applied equally to long guns and didn't
 5 have exemptions in it in terms of its --

6 A On -- on this narrow point, it would --
 7 it would at least make sense that -- there -- there
 8 would be some more coherent rationale rather than
 9 what strikes me as more of an ex post attempt to
 10 rationalize it. And -- and so at least with regard
 11 to that second point, it would -- it would kind of
 12 make more logical sense.

13 Q Uh-huh.

14 A The -- the remaining concern, though,
 15 would be those who have exemptions wouldn't be
 16 revealed; and the most serious concern, really, is
 17 you're not getting at illegal firearms, which,
 18 again, seem to predominate particularly accidental
 19 firearm deaths.

20 Q So you believe that if the law included
 21 long guns and didn't have exemptions, it would be
 22 more tailored to the aims articulated in these

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1 reports, even though it would, in your estimation,
 2 infringe upon more privacy rights?

3 A Oh, sure. That's exactly the -- I mean
 4 the -- the privacy rights are gonna be there
 5 regardless. Clearly, that's a heightened problem
 6 if they have twice as much disclosure, as it were.
 7 But the State would have a much easier time
 8 constructing a sort of, you know, coherent
 9 rationale for the law.

10 Q Right.

11 Do you know if New York regulates or
 12 requires permitting long guns?

13 A It does not require permitting to buy
 14 long guns, at least it -- it may in certain
 15 jurisdictions. I'm not sure what it's like in
 16 Manhattan. But my understanding, in most of the
 17 state it does not.

18 Q Uh-huh. And do you agree with me that
 19 the -- it is -- under PL 400, it is the permitting
 20 of the handgun that actually triggers the public
 21 disclosure, right?

22 A Correct.

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1 Q And long guns are not permitted in New
 2 York, so they don't come under the auspices of PL
 3 400, right?

4 A Right. There would be sales records,
 5 but --

6 Q Right. But they're not permitted, which
 7 is the triggering event --

8 A Right.

9 Q -- right?

10 A Right.

11 Q So in order for them to be included for
 12 the law to be more well tailored, New York would
 13 have to expand its gun laws to include permitting
 14 of long guns, right?

15 A Well, not necessarily. As I said, you
 16 could simply have sales records.

17 Q And do you know if the State has access
 18 to those types of sales records of --

19 A I would --

20 Q -- long guns?

21 A -- I would presume not.

22 Q I want to go back to this term "well

<p style="text-align: right;">Page 190</p> <p>1 tailored" that you use.</p> <p>2 Do you know that term from concepts that</p> <p>3 you've studied in the past?</p> <p>4 A Yes. So it is -- it is a -- a term that</p> <p>5 is sometimes used in -- with regard to levels of</p> <p>6 scrutiny.</p> <p>7 Q Uh-huh.</p> <p>8 A And the -- it struck me as -- as apt,</p> <p>9 both in that technical sense and in a kind of</p> <p>10 general sense to ask, you know. Because it's an</p> <p>11 interesting question: Does this actually</p> <p>12 accomplish those aims which these experts have</p> <p>13 claimed it would? Is it -- is it set up to do that</p> <p>14 in a sort of effective, efficient, and meaningful</p> <p>15 way?</p> <p>16 Q Okay. But when you use the term "well</p> <p>17 tailored," are you opining on the legal</p> <p>18 constitutionality of the tailoring of this law, or</p> <p>19 something else?</p> <p>20 A That's above my pay grade. I'm saying --</p> <p>21 making a point that -- say as a social scientist,</p> <p>22 if I asked: Is this giving me the information that</p>	<p style="text-align: right;">Page 192</p> <p>1 any data in making your determination that long</p> <p>2 guns are used considerably in these types of</p> <p>3 injuries or domestic violence incidents?</p> <p>4 A Injuries and deaths. So, yes, as I cite</p> <p>5 in my report -- and these are numbers that the --</p> <p>6 are obtainable through the CDC. And let me just</p> <p>7 find the page for you.</p> <p>8 (Witness looked at document). So this</p> <p>9 comes in a few ways. On page 14 I note from CDC</p> <p>10 data. And we learn that slightly less than half of</p> <p>11 accidental firearms deaths among children are due</p> <p>12 to the handguns.</p> <p>13 And then if you turn to -- on page 17.</p> <p>14 Again, you say -- where you stated in -- some terms</p> <p>15 up top, Substantial percentage of accidental</p> <p>16 firearms deaths of children 50.3 percent, according</p> <p>17 to CDC records. This is also -- same is true of</p> <p>18 child suicides by firearms.</p> <p>19 And then I proceed in the next paragraph</p> <p>20 to also look at long guns involved in these, and</p> <p>21 looking at the entire Northeast, looking at other</p> <p>22 states like New Jersey, Connecticut, Massachusetts,</p>
<p style="text-align: right;">Page 191</p> <p>1 these experts are claiming is what you would want</p> <p>2 if you actually thought that these things were a</p> <p>3 serious problem, which could be resolved through</p> <p>4 this information?</p> <p>5 And it seems clear to me that there are</p> <p>6 huge gaping problems with the -- you know,</p> <p>7 comprehensiveness is that this law, which makes it</p> <p>8 hard to claim this is exact -- this is what its</p> <p>9 justification is.</p> <p>10 Q Okay. So you would agree with me that</p> <p>11 the concept of whether a law is well tailored or</p> <p>12 properly tailored from a constitutional law</p> <p>13 perspective, that's -- that's within the province</p> <p>14 of the judge or the jury who make a determination,</p> <p>15 right?</p> <p>16 A I -- I'll leave that to the legal -- the</p> <p>17 lawyers or the judges --</p> <p>18 Q All right.</p> <p>19 A -- to determine.</p> <p>20 Q When you talk about the use of -- when</p> <p>21 you talk about this tailoring concept and you talk</p> <p>22 about long guns and the exemptions, did you rely on</p>	<p style="text-align: right;">Page 193</p> <p>1 and noting that New York isn't particularly</p> <p>2 different than these other states which don't have</p> <p>3 these disclosure requirements.</p> <p>4 Q Right.</p> <p>5 The data you looked at with respect to</p> <p>6 long guns exclusively deals with fatalities; is</p> <p>7 that right?</p> <p>8 A That's correct.</p> <p>9 Q Okay. So you don't -- or do you have</p> <p>10 data that you're aware of that discusses the use of</p> <p>11 long guns in accidental shootings of children that</p> <p>12 resulted in injury?</p> <p>13 A No. But I have no reason to believe that</p> <p>14 the percentages would be disproportionate, you</p> <p>15 know.</p> <p>16 Q Okay. How about do you have data that</p> <p>17 you relied on that talks about the use of long guns</p> <p>18 in domestic violence incidents that result in</p> <p>19 injury and not death?</p> <p>20 A Nope.</p> <p>21 Q Okay. And do you have data that you</p> <p>22 relied on about the use of long guns in domestic</p>

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1 violence incidents involving nonphysical threats or
 2 non -- or threats that do not result in physical
 3 injury?
 4 A Nope.
 5 Q You also talk about -- in addition to
 6 long guns, you talk about the law not including the
 7 exemptions; the individuals who are exempted,
 8 right?
 9 A Uh-huh.
 10 Q Do you have -- did you rely on any data
 11 as to how many individuals were -- that would have
 12 qualified but -- but for an exemption?
 13 A No.
 14 Q Okay. So if there's no data on that
 15 point, would it be fair to say that you would be
 16 theorizing that including those individuals that
 17 are exempted would make the law more well tailored?
 18 A So there's two parts to that sentence.
 19 I'm not sure how they connected to one another.
 20 Q Sure.
 21 A So I don't know the exact number of
 22 people granted exemptions. And the question was,

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1 given that --
 2 Q Right. I mean you have no data that
 3 suggests supporting the conclusion that including
 4 exempted individuals in the calculation would
 5 impact the results that Sege, Zeoli, and Hamilton
 6 want to avoid?
 7 A There's a lot of things to say in that
 8 sentence. One, I don't have any data that this law
 9 at all is impacting the outcomes they want to
 10 avoid. That already is a -- is a claim that I
 11 think is very hard to substantiate.
 12 The more basic point on this issue of
 13 comprehensiveness, however many exemptions have
 14 been issued, these places -- these households have
 15 guns. So if you think there's a compelling state
 16 interest that this is really valuable for
 17 protecting children, you know, why should there --
 18 those people be exempted; why should their privacy
 19 be protected.
 20 You know, it's just asking a -- I mean
 21 may -- maybe nobody's ever applied for this
 22 exemption. I guess the State would know. But

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1 assuming they did, the question would be: Do not
 2 Dr. Zeoli's and Dr. Sege's arguments apply equally
 3 to them, if you think this is really a value for
 4 safety?
 5 Q Do you agree with the law's inclusion of
 6 exemptions?
 7 A It's interesting. The exemption I see is
 8 a halfway house that it -- clearly, the outrage
 9 that followed the -- I believe the newspapers'
 10 exposé. As a political science it's really
 11 interesting to me to see how vociferous the outrage
 12 was and how quickly it resulted in actual
 13 legislative change. Like that -- that was -- that
 14 must've been pretty substantive.
 15 It -- it strikes me as this attempt to,
 16 on the one hand, validate that there's a real
 17 concern here to the privacy of gun owners. Like
 18 this is genuine and people are, you know,
 19 potentially threatened in a variety of ways.
 20 But then the actual mechanism devised
 21 here in this standard of, quote/unquote,
 22 harassment -- which has a very specific legal

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1 meaning in New York -- I think was a -- an attempt
 2 to evade the real underlying question. I think
 3 I -- I view it as a Band-Aid that doesn't really
 4 address the underlying injury, but it may, in the
 5 meantime, pacify or satisfy certain constituencies
 6 that were adversely affected.
 7 So like in a -- it's a small step in a
 8 better direction for those people who fit certain
 9 exemptions, but it really doesn't address the
 10 underlying problem.
 11 Q You mentioned -- you talk about the
 12 disclosure and the outrage following the disclosure
 13 leading to changes in the law.
 14 Is that what you had said?
 15 A I -- I -- I observed that everything
 16 seemed to be happening in relatively compressed
 17 time span here.
 18 Q Okay.
 19 A I don't know the agenda the legis --
 20 maybe -- presumably has been people -- on people's
 21 mind for a while. So I don't know the precise
 22 timeline.

<p style="text-align: right;">Page 198</p> <p>1 But it struck me both that there was</p> <p>2 relatively significant public outcry, and that one</p> <p>3 way or the other there was a -- a legislative</p> <p>4 attempt to address what was apparently perceived to</p> <p>5 be a deficiency in the law. I -- I think it -- it</p> <p>6 didn't -- it wasn't a sufficient way to address it.</p> <p>7 Q So, yeah, I'm just trying to understand</p> <p>8 your concept of the timing of the Safe Act and the</p> <p>9 amendments to include the exemptions.</p> <p>10 Is it your belief that the Safe Act</p> <p>11 was -- that the Safe Act came about and these</p> <p>12 amendments happened as a result of the outrage of</p> <p>13 the newspaper's public disclosure of this</p> <p>14 information or -- or --</p> <p>15 A No, I -- I was only suggesting that --</p> <p>16 that these were all part of, I think, a -- genuine</p> <p>17 issues of concern, so either that -- you know, you</p> <p>18 might think there's a lot of pent-up anxiety about</p> <p>19 this. The newspaper is one match that lights that.</p> <p>20 It wouldn't surprise me if there were</p> <p>21 long-standing existing concerns that also found</p> <p>22 their way legislatively into this separate than</p>	<p style="text-align: right;">Page 200</p> <p>1 stigmatization, or ostracism?</p> <p>2 A Sure. So two things to say. First, some</p> <p>3 of this is a matter of commonsense. There is --</p> <p>4 you know, Willie Sutton, the famous bank robber,</p> <p>5 when he was apprehended by the FBI was asked: Why</p> <p>6 do you rob banks? And his answer was: Because</p> <p>7 that's where the money is.</p> <p>8 And so if -- if guns are use -- you know,</p> <p>9 if these are valuable things, if they are desired</p> <p>10 by criminals, you know, if New York does a good job</p> <p>11 of keeping it out of the hands of criminals, the --</p> <p>12 it -- it stands to reason, I don't think you need</p> <p>13 a -- a Ph.D in social science to -- to think this,</p> <p>14 that, you know, publicizing locations of these</p> <p>15 valuable things might result in being targeted.</p> <p>16 And, actually, as I was writing this,</p> <p>17 locally here in the Maryland, in PG County. And</p> <p>18 then I believe a second one was in Montgomery</p> <p>19 County, we actually had two burglars where people</p> <p>20 drove their vans into gun shops at night and went</p> <p>21 in and looted the gun stores. And so I -- it -- it</p> <p>22 struck -- it strikes me as -- it strikes me as --</p>
<p style="text-align: right;">Page 199</p> <p>1 that -- separate from that of even before that.</p> <p>2 Q Let me direct your attention to the</p> <p>3 bottom of page 3 of your report, the paragraph --</p> <p>4 last paragraph of that page that begins "however."</p> <p>5 Do you see that?</p> <p>6 A Uh-huh.</p> <p>7 Q All right. You say in that paragraph,</p> <p>8 The many harms that handgun license holders could</p> <p>9 suffer as a consequence of disclosure that do not</p> <p>10 rise to the level of harassment, for example,</p> <p>11 license holders could be targeted by burglars</p> <p>12 seeking to steal firearms, or subject to</p> <p>13 discrimination, stigmatization from their</p> <p>14 communities, and ostracism from social circles.</p> <p>15 Do you see that?</p> <p>16 A Yes.</p> <p>17 Q And that's your opinion, right?</p> <p>18 A That is.</p> <p>19 Q All right. Now, what data did you rely</p> <p>20 upon to come to the conclusion that license holders</p> <p>21 could be targeted by burglars seeking to steal</p> <p>22 firearms, or subject to discriminations,</p>	<p style="text-align: right;">Page 201</p> <p>1 as we do have evidence that guns are targeted by</p> <p>2 criminals. This would provide a map that would be</p> <p>3 used for criminals.</p> <p>4 And to answer your second part of the</p> <p>5 question, so the -- this question of stigmatization</p> <p>6 and ostracism, you know, that's partly formed by</p> <p>7 some of the research I cite on, you know, some</p> <p>8 modern issues and polarization, political</p> <p>9 psychology, that suggests that there -- not only is</p> <p>10 there the potential for explicit, but, in fact, it</p> <p>11 appears widespread implicit bias against partisans</p> <p>12 but also bias that's particularly linked and</p> <p>13 associated to people's association with gun,</p> <p>14 gun-owning activities.</p> <p>15 Q All right. Let's look at the burglary</p> <p>16 issue first, then we'll talk about discrimination</p> <p>17 and the ostracism.</p> <p>18 Isn't the exact opposite also possible?</p> <p>19 You say, Publicizing the locations of</p> <p>20 guns could lead to burglaries.</p> <p>21 Isn't -- it is just as possible that the</p> <p>22 notice -- the knowledge of the presence of the gun</p>

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1 would dissuade the burglar? Isn't that also a
 2 logical --
 3 A Yeah, well, if I was a logical burglar, I
 4 would wait outside the door in the morning until
 5 the person went to work. So I -- I think you're
 6 right. You -- you definitely want to plan home
 7 invasions when nobody is at home.
 8 Q Okay.
 9 A So -- so I think it does the burglars two
 10 things. There's something valuable here.
 11 Definitely don't go there when the homeowner is
 12 there.
 13 Q Now, this law, as you testified earlier,
 14 I believe it's been around since 1960, right?
 15 A Uh-huh.
 16 Q Sometimes in the '60s?
 17 Were you able to find any single incident
 18 of this law being used to result in the
 19 burglarization of someone's handgun from their
 20 home?
 21 A So I didn't look.
 22 Q Okay. You didn't look. But you did

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1 theorize that this could be a clear harm to a
 2 handgun license holder.
 3 Why didn't you look at that if you opined
 4 that it could be a harm?
 5 A Well, I mean I -- there were two news
 6 stories the week I was writing this, locally, that
 7 you know, demonstrated the same thing.
 8 Q Well, did those demonstrate the same
 9 thing?
 10 Those were -- those were -- you said
 11 burglaries to gun stores.
 12 I mean I'm not a gun burglar, but I would
 13 assume that someone would know that there are guns
 14 in a gun store, with or without public disclosure,
 15 right?
 16 A Yes, burglars target guns. That --
 17 Q Yeah.
 18 A -- that -- we don't dispute that.
 19 Q But are you likening the homes to guns
 20 stores that -- I mean --
 21 A Well --
 22 Q -- your proof for this happening is the

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1 burglarization of gun --
 2 A Yeah.
 3 Q -- stores?
 4 A So these gun stores had big bars and
 5 security cameras. I think homes are much softer
 6 targets. I would think much more preferred.
 7 Now, there's a second part, to answer
 8 your question, which may be something worth noting
 9 in the general conversation here, which is to my
 10 understanding for much of the history of this
 11 law -- and this is partly because of changes in
 12 technology and -- and, you know, digital access, in
 13 effect, in practice, it was fairly hard to access
 14 these sorts of documents on a systematic basis.
 15 And in some sense, the -- I mean the
 16 internet has changed this -- this equation, so I --
 17 if you thought about the most fruitful time to
 18 study this, as a matter of criminology, I would
 19 think there's -- there's an interesting window.
 20 But that would require a lot of -- a lot of side
 21 research, which is not --
 22 Q How is --

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1 A -- in the purview here.
 2 Q -- how is the public information gained
 3 under PL 400?
 4 A My understanding is historically you'd
 5 have to make an inquiry.
 6 Q And that's through FOIL, we established,
 7 right?
 8 A FOIL-like, yeah.
 9 Q Okay. Now, can you make an anonymous
 10 FOIL request, as far as you know?
 11 A I -- I'm not certain. And we have to --
 12 I -- in New York?
 13 Q Sure. Anywhere. Can you make an
 14 anonymous FOIA or FOIL request in any jurisdiction
 15 in this country, as far --
 16 A So it -- it -- technically, you can. And
 17 here's how. We have aggregators, so -- like when I
 18 was at Harvard's ethics center, there's something
 19 called "muckrock" up there. And what they would do
 20 is -- I -- you know, much of researchers might want
 21 (sic) information about Federal Reserve. And we
 22 would all make a request to "muckrock."

<p style="text-align: right;">Page 206</p> <p>1 And they would aggregate these requests</p> <p>2 into their own journalistic FOIA. So, in effect,</p> <p>3 yes, actually, you can.</p> <p>4 Q Okay. So is it your testimony that it's</p> <p>5 viable that a home -- the home burglar looking to</p> <p>6 steal guns would partake in some sort of anonymous</p> <p>7 FOIL request to get information to locate guns that</p> <p>8 they could burglarize.</p> <p>9 Is that a -- is that a reasonable theory?</p> <p>10 A Well, it turns out by 2012, they wouldn't</p> <p>11 have to, because newspapers were publicly</p> <p>12 requesting this information and publishing online.</p> <p>13 So all you'd need would be an internet connection</p> <p>14 and, you know, the ability to -- to search.</p> <p>15 Q Uh-huh. But what I --</p> <p>16 A Pardon me. I -- I may have gotten that</p> <p>17 date -- I see I was mis-citing from the wrong page.</p> <p>18 Q Yeah.</p> <p>19 A In -- in -- in, you know -- in recent</p> <p>20 memory, newspapers published this information.</p> <p>21 Q Uh-huh. But what --</p> <p>22 A Which meant you did not -- anybody could</p>	<p style="text-align: right;">Page 208</p> <p>1 400 to gain information to burglarize a home for a</p> <p>2 gun?</p> <p>3 A I did not specifically investigate that.</p> <p>4 However, I would not be surprised if there were to</p> <p>5 be more evidence of that than there were of</p> <p>6 accidental deaths of handguns by playmates visiting</p> <p>7 a house with a legally registered firearm, which I</p> <p>8 couldn't find a single incidence of.</p> <p>9 Q Is there a reason why you didn't search</p> <p>10 this before making this -- before opining as to</p> <p>11 this?</p> <p>12 A It struck me as, on the one hand, an --</p> <p>13 an obvious enough conjecture that anybody could see</p> <p>14 the value that a criminal might make of public</p> <p>15 records like were published by the newspaper.</p> <p>16 On the other hand, to do a really</p> <p>17 detailed evaluation at -- at one point, I actually</p> <p>18 did reach out to your criminal justice statistics</p> <p>19 office, trying to obtain some data. And it was</p> <p>20 actually very difficult to get the data. We have</p> <p>21 deadlines. So it could be the subject of a much</p> <p>22 larger research project. But the underlying point</p>
<p style="text-align: right;">Page 207</p> <p>1 access --</p> <p>2 Q Yeah, I mean --</p> <p>3 A -- this.</p> <p>4 Q -- that wasn't the question I was asking.</p> <p>5 What I was asking is say before the</p> <p>6 public -- the newspapers' public access, which has</p> <p>7 happened, as far as we know, once, do you think</p> <p>8 it's reasonable to assume that a burglar would FOIL</p> <p>9 information and use that information to burglarize</p> <p>10 homes?</p> <p>11 A It's certainly a potential. I think it's</p> <p>12 almost as ridiculous to think that a parent would</p> <p>13 do it to a playmate.</p> <p>14 Q Uh-huh.</p> <p>15 A So I -- I find them equally farfetched,</p> <p>16 if there's a strong barrier. But I take it partly</p> <p>17 what prompts these concerns in a digital age is</p> <p>18 because barriers have been moved.</p> <p>19 Q So just to be clear, other than your</p> <p>20 anecdotal evidence of two gun store burglaries in</p> <p>21 D.C., do you have any firm data or evidence that</p> <p>22 suggests that anyone in New York has ever used PL</p>	<p style="text-align: right;">Page 209</p> <p>1 seems to be an obvious one.</p> <p>2 Q Did you discover -- did you search for or</p> <p>3 discover any news articles anywhere in the state of</p> <p>4 New York that suggested that someone had used PL</p> <p>5 400 to gain information to burglarize a home?</p> <p>6 A We were talking about fears earlier, and</p> <p>7 the possible fear that a abused spouse or other</p> <p>8 might fear seeing a gun or knowing about a gun. I</p> <p>9 did see documented many gun owners who feared</p> <p>10 burglaries. So if you want to, again, include</p> <p>11 the -- now, it's difficult to measure. But if you</p> <p>12 want to include these things on the scales, I -- I</p> <p>13 think they cut both ways.</p> <p>14 And, yes, I came across many reports --</p> <p>15 Q Okay.</p> <p>16 A -- of gun owners who say they felt fear</p> <p>17 for that particular reason.</p> <p>18 Q Did you pull those reports in your</p> <p>19 research?</p> <p>20 A I don't mention it in my --</p> <p>21 Q Okay.</p> <p>22 A -- things, but I believe they're publicly</p>

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1 available.

2 MR. DAGUE: We're going to ask for

3 disclosure of any information that the doctor

4 relied upon to that end. Any reports that were not

5 included in here, we're going to ask for that

6 disclosed. And I'll follow up with a letter

7 afterwards.

8 BY MR. DAGUE:

9 Q Yeah, you mentioned reaching out to the

10 New York State department -- was it DCJS or State

11 Police that you --

12 A I think --

13 Q -- reached to?

14 A -- it was DCJS.

15 Q Okay.

16 A And what's that, Department of --

17 Q Criminal Justice --

18 A -- Statistics. I believe that's them,

19 yes.

20 Q Criminal Justice Statics, I think that's

21 the --

22 MS. CONNELL: Services.

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1 BY MR. DAGUE:

2 Q Services.

3 And did you personally --

4 MS. CONNELL: No, it's statistics, sorry.

5 BY MR. DAGUE:

6 Q -- personally reach out to DCJS?

7 A Yes.

8 Q Okay. And did you reach out to them via

9 letter, email, or other?

10 A It was an email.

11 Q And when did you do that?

12 A I'd have to go back and check.

13 Q Okay.

14 MR. DAGUE: We'll call for disclosure of

15 that email or letter that he sends. And I'll

16 follow up with a letter.

17 MR. CHUCK COOPER: Will your question be

18 that he relied on something from that office?

19 THE WITNESS: I did -- I -- I did not

20 obtain any data from them.

21 MR. DAGUE: Right. I'm just interested

22 to determine what the nature of his request was, to

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1 make a basis of --

2 MR. CHUCK COOPER: Well, he's right here.

3 Why don't you ask him?

4 MR. DAGUE: Well, I --

5 MR. CHUCK COOPER: He's right here.

6 MR. DAGUE: -- I'd seek to verify the

7 credibility that he made this request and sought

8 this information.

9 MS. CONNELL: You guys can object. And

10 then we'll take it up to the judge.

11 MR. DAGUE: I'll put it in a letter.

12 I'll put it in a letter. We will follow up in a

13 letter.

14 BY MR. DAGUE:

15 Q Okay. What did you ask for from DCJS

16 specifically? Do you remember?

17 A Yeah, that I -- was on the domestic --

18 off the -- I believe I asked, first of all, for how

19 I could access crime statistics in the two counties

20 that had -- I don't remember how I phrased this,

21 but I was asking them, basically, how do I access

22 crime statistics.

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1 Q Okay.

2 A And are these -- I believe it was a

3 discussion around at the county level, what's

4 reported to the state. At some point that -- in

5 subsequent email, asked about also the -- I think

6 the domestic violence reporting system.

7 Q Okay. And did --

8 A But --

9 Q -- DCJS get back to you?

10 A They -- yeah, they did. They --

11 initially they said, actually, in a lot of these

12 counties -- and I don't -- maybe it's precincts. I

13 forget how they -- the police stuff is divided.

14 But they said a lot of these things have been

15 switched over to a new reporting system; therefore,

16 they don't have this data at the State level. And

17 I be -- I forget where we ended the conversation on

18 the -- on the domestic violence, though.

19 I think at one point I was trying to

20 ascertain whether I could get access to the -- the

21 domestic violence reporting system. And I either

22 discovered online at a certain point and then

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1 ceased writing them back or maybe they told me, but
 2 the -- the gist of the conversations was the crime
 3 reporting for these two counties wasn't probably at
 4 a level of resolution or not -- wasn't at the level
 5 of resolution that I would have liked, and -- and
 6 that it -- that it was gonna take some time to
 7 figure out how to query this, so --
 8 Q Okay. Did you receive any information
 9 from DCJS or any other source that suggested that
 10 incidents of burglaries in homes rose after the
 11 publication of the gun information?
 12 A No, but I would have loved to have looked
 13 at that.
 14 Q Okay. And you didn't look at that
 15 because you didn't get information from --
 16 A Yeah.
 17 Q -- DCJS?
 18 A Yeah. It -- it -- the information was
 19 not available at the -- with the amount that -- the
 20 amount of information I would have needed in terms
 21 of addresses and that sort of thing.
 22 Q Did you go to the county specifically and

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1 ask for the information from them?
 2 A No. At that point, the -- it was clear
 3 some sorts of information either weren't kept or
 4 were gonna be a headache to --
 5 Q Okay.
 6 A -- to get, so I -- I was on time with the
 7 deadline, and that seemed like a distraction at
 8 that point.
 9 Q Okay. So fair to say, then, you have no
 10 data, no newspaper articles suggesting burglaries
 11 targeted based on 400; is that right?
 12 A Yeah, it's only commonsense I'm relying
 13 on this.
 14 Q Okay. And do you have any anecdotal
 15 evidence of burglaries in New York happening as a
 16 result of Section 400's public disclosure?
 17 A No, I did not investigate that.
 18 Q Okay. So, you know, it's fair to say
 19 that this is based solely on commonsense and
 20 speculation?
 21 A Reason, commonsense, sort of -- I'd say,
 22 yeah, obvious speculation.

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1 Q Okay. Now, similar question. We talked
 2 a little bit about your other suggestion in the
 3 report that apart from burglary, there's this
 4 possibility of the subject of the public disclosure
 5 being subjected to discrimination, stigmatization
 6 within their communities, and ostracism from other
 7 social circles.
 8 Now, I know you talked about the report
 9 or study that you looked at with respect to
 10 partisan stimuli. And we'll talk about that in a
 11 minute.
 12 A Uh-huh.
 13 Q But sitting that aside for the time
 14 being, did you have any data, aside from the
 15 partisan stimuli article that you relied on, any
 16 data from other sources that supported this claim
 17 that there were individual gun owners who
 18 experienced discrimination, stigmatization,
 19 ostracism at any point since the law was passed in
 20 1960?
 21 A So my understanding is that one of the
 22 Plaintiffs actually is worried about this.

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1 Q Uh-huh.
 2 A So there was, you know, prima facie
 3 evidence right that there that it was a --
 4 Q What's --
 5 A -- a sincere worry.
 6 Q What's he worried about? Do you know?
 7 A My understanding -- I -- I have not
 8 talked to this individual. My understanding is
 9 there are a variety of ways in which this knowledge
 10 might disadvantage someone. It could in -- in
 11 social circles. It could be people not wanting to
 12 invite you to events, people not wanting to be
 13 friends with you, people learning something they
 14 didn't previously know about you, ostracizing you.
 15 Q And let me focus on Doe Number 1. I
 16 believe that you testified that you believe that he
 17 had a worry about this.
 18 What I was asking is do you know what Doe
 19 1's specific articulation of this is, what his
 20 specific concern is? Do you know that?
 21 A I didn't speak with Doe -- whatever, Doe
 22 I --

<p style="text-align: right;">Page 218</p> <p>1 Q Okay.</p> <p>2 A -- or 2 it is.</p> <p>3 Q Well, yeah, you just said that you -- you</p> <p>4 believe that one of the Plaintiffs was worried</p> <p>5 about this.</p> <p>6 I was wondering if you know --</p> <p>7 A Right.</p> <p>8 Q -- in what capacity he's worried about</p> <p>9 this?</p> <p>10 A The -- I don't know all the capacities --</p> <p>11 Q Okay.</p> <p>12 A -- in which he's worried about that.</p> <p>13 Q Did you review his deposition testimony</p> <p>14 prior to today?</p> <p>15 A I don't believe I've seen his deposition.</p> <p>16 Q And I believe I misspoke.</p> <p>17 It's Doe Number 2, right?</p> <p>18 A Yeah, that's --</p> <p>19 Q Would you be surprised to learn that the</p> <p>20 extent of Doe Number 2's concern on this front was</p> <p>21 articulated only to be that his wife would not be</p> <p>22 included in her garden club if this information</p>	<p style="text-align: right;">Page 220</p> <p>1 data to support this claim that individuals have</p> <p>2 been discriminated, stigmatized from their</p> <p>3 communities or ostracized from social circles?</p> <p>4 A No. And it'd be very difficult to obtain</p> <p>5 that data on short order, precisely given, as I'm</p> <p>6 sure, you know, the -- the many ways that</p> <p>7 discrimination can be manifested in our society.</p> <p>8 So I -- I think it's an interesting question that</p> <p>9 might be pursued. But it's a complex question,</p> <p>10 one, difficult in the various ways to -- to -- to</p> <p>11 measure and get at.</p> <p>12 You know, like all forms of</p> <p>13 discrimination -- racial, gender, and otherwise --</p> <p>14 that we struggle in society to actually document</p> <p>15 and measure it.</p> <p>16 Q Now you talked about that -- remember, we</p> <p>17 talked about that Vermont case you were involved</p> <p>18 in?</p> <p>19 A Uh-huh.</p> <p>20 Q And you conducted a sort of survey in</p> <p>21 that case?</p> <p>22 A Right.</p>
<p style="text-align: right;">Page 219</p> <p>1 became public?</p> <p>2 A I -- I'm sorry, the first part of it is:</p> <p>3 Am I surprised that that's the case, or that's --</p> <p>4 Q Yeah, that was what he testified to in</p> <p>5 his deposition.</p> <p>6 A That would certainly be consistent with</p> <p>7 it.</p> <p>8 Q Would you be surprised that he said</p> <p>9 nothing about discriminization -- discrimination</p> <p>10 or stigmatization, only the wife not being included</p> <p>11 in her local garden club?</p> <p>12 A It doesn't surprise me. I mean I -- I</p> <p>13 don't know this person's background. The average</p> <p>14 person on the street wouldn't use the term</p> <p>15 "stigmatization."</p> <p>16 Q Uh-huh.</p> <p>17 A I don't think my average student would</p> <p>18 use that. But my average student would be really</p> <p>19 upset if they didn't get to be part of a social</p> <p>20 club that they found socially meaningful and</p> <p>21 valuable at Georgetown.</p> <p>22 Q Now, other than Doe 2, did you find any</p>	<p style="text-align: right;">Page 221</p> <p>1 Q What -- was there a specific name for</p> <p>2 that type of survey?</p> <p>3 A It was a -- a random survey --</p> <p>4 Q I thought you referred --</p> <p>5 A -- public --</p> <p>6 Q -- to it as something.</p> <p>7 A I mean there's a --</p> <p>8 Q Right. Now, that -- that -- could that</p> <p>9 have been a way to collect data with respect to</p> <p>10 discrimination, stigmatization, or ostracism is</p> <p>11 a -- do a survey of gun owners?</p> <p>12 A The -- oh, and as gun owners. Okay.</p> <p>13 I -- I thought you were gonna say a survey of</p> <p>14 discriminators.</p> <p>15 It's very -- the problem is, like all</p> <p>16 forms of discrimination, you'd be subject both to</p> <p>17 response bias of, you know, either people not</p> <p>18 wanting -- I mean first of all, the privacy concern</p> <p>19 that you might, you know, tell a stranger about</p> <p>20 something which you think can disadvantage you.</p> <p>21 And so you're -- it's -- it's a -- it's actually a</p> <p>22 tough question to get at.</p>

<p style="text-align: right;">Page 222</p> <p>1 And this -- this is true with like all</p> <p>2 discrimination research. You're asking, you know:</p> <p>3 Hello. I'd like to talk about the sensitive</p> <p>4 aspects of your life that we think that might hurt</p> <p>5 you. So tell me about those.</p> <p>6 It's a tough -- it's a tough question.</p> <p>7 So we -- I wouldn't -- a survey approach wouldn't</p> <p>8 be my preferred approach to --</p> <p>9 Q Okay.</p> <p>10 A -- try and get --</p> <p>11 Q But tough or not, a survey could be --</p> <p>12 could be used to try to access the information,</p> <p>13 right?</p> <p>14 A I would think unless -- a survey is more</p> <p>15 likely than not to get you bad data unless it's</p> <p>16 very carefully and thoughtfully constructed on this</p> <p>17 front. So my concern would be a poorly done survey</p> <p>18 would be much worse than no survey at all.</p> <p>19 Q So would information with respect to this</p> <p>20 incidence of discrimination, stigmatization, or</p> <p>21 ostracism have been helpful or interesting to you</p> <p>22 in creation of this report?</p>	<p style="text-align: right;">Page 224</p> <p>1 teaser questions, all these ways to make sure</p> <p>2 you're not getting bias responses.</p> <p>3 On this stuff, an experiment is much</p> <p>4 better situated to try to evaluate that.</p> <p>5 Q So it's your belief that if you conducted</p> <p>6 a survey and asked licensed handgun owners if they</p> <p>7 believed that information -- if information about</p> <p>8 their ownership got out if they would be</p> <p>9 discriminated against or ostracized, you believe</p> <p>10 that they would be hesitant to give you -- to give</p> <p>11 a surveyor the correct answer on that, because they</p> <p>12 don't want to talk about discrimination?</p> <p>13 A I'm not even sure, in New York, if I ran</p> <p>14 a survey, I could get people to admit to having a</p> <p>15 handgun license.</p> <p>16 Q Well, you could use public law Section</p> <p>17 400 to get that information, couldn't you?</p> <p>18 A I think they'd distrust me even more if I</p> <p>19 did.</p> <p>20 Q Well, if --</p> <p>21 A If I said I found your --</p> <p>22 Q -- couldn't you --</p>
<p style="text-align: right;">Page 223</p> <p>1 A Pardon me?</p> <p>2 Q Would information with respect to</p> <p>3 discrimination, stigmatization, ostracism from</p> <p>4 social circles have been interesting to you in --</p> <p>5 in -- if available, for this report?</p> <p>6 A What I would have wanted to do -- I mean</p> <p>7 if -- you know, similar to what was done in that</p> <p>8 one study -- so there -- the best way to get this</p> <p>9 would be something like an experiment, where, you</p> <p>10 know, you could imagine going into a social club</p> <p>11 that's deciding on its membership or going into a</p> <p>12 job that's deciding on its employees, and showing</p> <p>13 them CVs, where half the people -- I don't know --</p> <p>14 mention their NRA affiliation, half of them don't.</p> <p>15 See if that actually has an effect on who gets</p> <p>16 chosen.</p> <p>17 So I -- survey stuff would really not be</p> <p>18 ideal for those purposes. You know, even -- you</p> <p>19 know, we take extraordinary effort, even in</p> <p>20 surveys, to ensure non -- anonymity. You also do</p> <p>21 all these -- I mean even in reg -- like even the</p> <p>22 one I did in Vermont, you have all these layers of</p>	<p style="text-align: right;">Page 225</p> <p>1 A -- records --</p> <p>2 MR. CHUCK COOPER: Hold on. Let him</p> <p>3 finish.</p> <p>4 BY MR. DAGUE:</p> <p>5 Q Go ahead.</p> <p>6 A If I said, hello, I dug up these records,</p> <p>7 which are extremely controversial and many people</p> <p>8 have said shouldn't be public-available, I'd now</p> <p>9 like to ask you questions, I think there would be a</p> <p>10 concern there of: You shouldn't have my name in</p> <p>11 the first place; therefore, I'm very suspicious.</p> <p>12 And so, yeah, yeah, I think it's a --</p> <p>13 Q But that --</p> <p>14 A -- it's a difficult --</p> <p>15 Q -- that wasn't --</p> <p>16 A -- thing to ask.</p> <p>17 Q -- the question I asked. I asked if you</p> <p>18 could use the law to get that information to</p> <p>19 conduct that survey, not what you think their</p> <p>20 response would be.</p> <p>21 Could you use the -- could you use the</p> <p>22 law to --</p>

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<p>1 A But --</p> <p>2 Q -- get the information to --</p> <p>3 A What I'm telling you --</p> <p>4 Q -- could you use the law, public law 400,</p> <p>5 to access the information to conduct your survey</p> <p>6 with respect to discrimination, ostracism, or</p> <p>7 stigmatization of gun owners?</p> <p>8 A I can try to. And that would give me a</p> <p>9 bad survey with not very good data.</p> <p>10 Q And -- and --</p> <p>11 A Is my worry.</p> <p>12 Q -- you're speculating that that would</p> <p>13 give you a bad survey, because you didn't conduct</p> <p>14 the survey, right?</p> <p>15 A Well, you wouldn't even -- there's a lot</p> <p>16 of ways in which you'd want to double-check this,</p> <p>17 but the concern is -- I mean we can study it</p> <p>18 through response rates. Yeah, the concern is you'd</p> <p>19 have both explicitly low response rates and what's</p> <p>20 sometimes called response bias, even in what people</p> <p>21 are willing to admit</p> <p>22 Q So having not conducted a study into this</p>	<p>1 specifically looked at handgun owners' either</p> <p>2 beliefs or perceptions about stigmatization or</p> <p>3 actual experiments that have tried to examine in</p> <p>4 the field discriminatory effects.</p> <p>5 Q Okay. Let's talk about your final</p> <p>6 sentence on page 3 and top of 4. You talk about</p> <p>7 another potential consequence for disclosure.</p> <p>8 You talk about -- you say, Moreover, this</p> <p>9 may prevent law-abiding citizens who wish to</p> <p>10 acquire a handgun from doing so, because of a</p> <p>11 reasonable fear that this information could be used</p> <p>12 against them in a manner that is not encompassed by</p> <p>13 the formal definition of harassment in New York.</p> <p>14 Do you see that?</p> <p>15 A Uh-huh.</p> <p>16 Q And that's your opinion, right?</p> <p>17 A Not only is that my opinion -- that is my</p> <p>18 opinion.</p> <p>19 Q Okay.</p> <p>20 A And this brings up a great point, which I</p> <p>21 forgot to mention, which is partly who you'd want</p> <p>22 to approach and query in some way is not simply</p>
Page 227	Page 229
<p>1 particular issue, are you aware of anyone who has</p> <p>2 conducted a survey -- not just in New York, but</p> <p>3 nationally -- with respect to feelings of</p> <p>4 discrimination, stigmatization, or ostracism</p> <p>5 related specifically to licensed handgun ownership?</p> <p>6 A I'm not. But to reiterate, I -- I think</p> <p>7 a survey would be one of the least informative ways</p> <p>8 to try to get that question.</p> <p>9 Q And I didn't -- that question wasn't with</p> <p>10 respect to just surveys. If it was, I apologize.</p> <p>11 A Sure.</p> <p>12 Q I asked studies.</p> <p>13 Are you aware --</p> <p>14 A Okay. So --</p> <p>15 Q -- about any --</p> <p>16 A -- don't --</p> <p>17 Q -- any studies --</p> <p>18 I had asked specifically about studies --</p> <p>19 A Right.</p> <p>20 Q -- more generally.</p> <p>21 Are you aware of any studies on that?</p> <p>22 A So I don't know of any studies that have</p>	<p>1 those who are handgun owners, but those who want to</p> <p>2 be handgun owners and aren't.</p> <p>3 Q Uh-huh.</p> <p>4 A Because, presumably, there's also a</p> <p>5 population -- I believe Doe 2 is one of these</p> <p>6 people -- who wouldn't be on your handgun list</p> <p>7 precisely because they're worried about its</p> <p>8 effects. So there -- and I don't know how large</p> <p>9 that population is, but --</p> <p>10 Q Right.</p> <p>11 A -- presumable many people out there,</p> <p>12 precisely because of these concerns, aren't</p> <p>13 becoming handgun owners at all.</p> <p>14 Q Well, that was my next question. I mean</p> <p>15 you said presumably there are many people.</p> <p>16 Do you know how many there are?</p> <p>17 A It's hard to query that, right?</p> <p>18 Q Right. So you don't have any data to</p> <p>19 suggest how many --</p> <p>20 A No.</p> <p>21 Q -- people there are out there, right?</p> <p>22 A No.</p>

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1 Q Okay. Do you have any evidence to
2 suggest how many people that are out there that are
3 suffering from this concern?
4 A No. Like -- like many stigmatized
5 activities, there's actually a lot of research on
6 this sort of stuff. If you want to ask about
7 prevalence of HIV infection, number of abortions
8 sought, you know, all sorts of sensitive --
9 sensitive information. It's a very difficult thing
10 because your traditional off-the-shelf survey stuff
11 is not gonna give you necessarily the -- the
12 frankness and that you -- that you want.
13 Q Are you surprised that a law that has
14 been on the books since, as you testified, the
15 1960s, you have no data or hard evidence to support
16 to demonstrate numbers of individuals who are
17 dissuaded from purchasing a handgun because of the
18 law, the public disclosure aspect of the law?
19 A No. Of course not. And there's a very
20 clear explanation for that, is that for most of
21 this history, it is very hard to access these
22 records. You have a -- a situation with the advent

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1 of digital technologies, where all of a sudden this
2 stuff, like the newspaper, can be available on a
3 mass scale. And fairly shortly after that, you
4 have an injunction. So actually, the -- the window
5 in which this is stuff is happening is pretty
6 limited.
7 Q Do you know how many handguns -- licensed
8 handguns were sold in New York since the advent of
9 this law in the 1960s?
10 A I don't. I mean I estimate, you know,
11 based on those disclosure numbers, how many
12 potentially current handgun permit owners there
13 might be.
14 Q Well, if you're going to opine about with
15 respect to law-abiding citizens wishing to acquire
16 handguns who won't, don't you think it would be
17 interesting to have looked at the numbers and rates
18 of licensed handguns purchased in New York since
19 the advent of this law over the last 30-plus years?
20 A I'm not sure that I follow. Can you
21 suggest --
22 Q Sure.

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1 A -- how that'd be useful?
2 Q You opine that there are law-abiding
3 citizens who are prevented from purchasing a
4 handgun because of this law.
5 What I asked is: Do you think that data
6 should have been looked -- you should have looked
7 at data that demonstrated how many handguns have
8 been purchased, and if there's a dip in handgun
9 purchase surrounding amendments to this law or
10 creation of this law?
11 A Yeah, I think that would be less
12 informative than -- than you may hope. The -- I
13 would welcome, if New York wants to make available
14 to me, data like that. You know, similar with the
15 Department of Criminal Justice Statistics. It
16 occurs to me there are some kind of need to
17 econometric studies one could do.
18 Q Did you request that data?
19 A The -- again, I was -- I was -- in those
20 two counties -- I believe it was two counties I
21 inquired about it. Maybe Rockland and Westchester.
22 I might have inquired about one of them first. But

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1 it quickly became evident to me that they did not
2 either possess or were not able to turn over to me
3 the -- the resolution of data that would be needed
4 for what I was looking into.
5 Q Did you request from those counties --
6 just to be clear, did you request this specific
7 information about with respect to handgun licenses
8 issued during periods of time?
9 A No. My -- the -- the flow of work on
10 this was first I wanted to get -- see if I could
11 get crime data by -- actually, with the locale.
12 And the -- the next step would have been to see
13 whether you can -- to delete the handgun owner
14 stuff, where I could have studied its effects on
15 that stuff.
16 So once I realized I couldn't get the
17 data I was hoping for and -- but, again, if -- if
18 New York State wants to provide that data, I'd be
19 more than happy to look at it.
20 Q Right. But you would have to request
21 that first.
22 And did you request that from DCJS or

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1 every county in the state?

2 A No. No, that's --

3 Q Okay.

4 A -- that was infeasible on the time scale

5 that --

6 Q Okay.

7 A -- I was working on.

8 Q So what data or studies or anecdotal

9 information did you base your conclusion that there

10 are law-abiding citizens who would like to acquire

11 a handgun but are not doing so because of Section

12 PL 400?

13 A Well, I have the -- the prima facie claim

14 by the Defendant.

15 Q Uh-huh.

16 A And then I step back and ask, well, what

17 do we have good research on, on this domain of, you

18 know, concerns about stigmatization, ostracism,

19 adverse impact. And, of course, you know,

20 generally on discrimination stuff, there's been a

21 lot of interest in these questions. And we have

22 this study from 2014. And this is -- this is, you

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1 know, well before Trump was even -- announced a

2 candidacy documenting political polarization and

3 its effects.

4 And one of the -- I mean bombshell --

5 this is a -- very widening on paper, one of the --

6 the bombshell revelations for this, is the -- the

7 bias that accompanies, you know, partisan and

8 co-partisans and out-group partisans appears to be

9 as severe, if not worse, than racial bias. And

10 that, in fact, this translates to people's -- it's

11 not only a -- and -- and part of the -- the

12 innovation of this is it's looking at what's

13 sometimes called implicit or -- or you might think

14 of it as unconscious bias.

15 But not only does that exist, as it were,

16 in people's minds, but it also seems to actually

17 affect their real decisions -- their -- their

18 decisions in all sorts of, you know, real world

19 type scenarios.

20 So they have this task of awarding

21 scholarships. They have these various economic

22 games. And it's both the case that people are

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1 willing to reward co-partisans, but also that

2 they're willing to punish partisans, even beyond

3 say independence.

4 And as it happened for this very study,

5 the most discriminate set of stimuli that I could

6 get included the National Rifle Association logo,

7 which, you know, on the surface of it is kind of an

8 interesting finding. But it also means that the

9 partisan attributions that are very much underlying

10 this animus and underlying the behavior associated

11 with it, has this explicit link to firearms, to

12 firearms affiliation and identity.

13 And I thought this is actually a pretty

14 interesting study to --

15 Q Let's take a look at --

16 A -- document some of this.

17 Q Doctor, you're talking about the Fear and

18 Loathing Across Party Lines study by --

19 A That is correct.

20 Q -- Iyengar and Westwood?

21 A That's right.

22 Q Okay. Isn't it true -- you said that --

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1 you said that this -- some of the most intense

2 partisan feelings was related to the NRA logo,

3 right?

4 A That's correct.

5 Q And that's your reading of the study?

6 A Yes.

7 Q Okay. Now, I read the study. And the

8 way I interpreted that more was that the author

9 selected a -- a set of associational images for

10 R&D. And one of them they selected was the NRA.

11 And for the Democrats, it was Greenpeace.

12 Do you believe this study concludes in

13 any way that individuals react to the NRA logo

14 specifically, or was that just an associational

15 device they used?

16 A Right. Did you read the online material,

17 the -- there's supplemental materials for this?

18 Q No. And that's what I'm asking.

19 Where is that --

20 A Okay --

21 Q -- in that there, if --

22 A -- so it --

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1 Q -- it exists?

2 A -- yep.

3 Q If it exists --

4 A Yeah, so --

5 Q -- where is --

6 A -- it's on --

7 Q Let me clear it up.

8 So do you believe there is information or

9 materials out there that demonstrate that; and

10 where are they, if so?

11 A Yeah, so they published -- and this is

12 increasingly done in academia. They published

13 online supplemental materials. It's probably about

14 three times as long as the article. And it's not

15 obvious when you go on the page, but if you search

16 this article and you go to its -- its publisher's

17 page, scroll down. At the bottom of the page

18 there'll be a thing you can click for supplement --

19 supplemental material. You have to click that even

20 to enlarge it.

21 Q Okay.

22 A Then you click there. And so they --

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1 they go -- go through with extraordinary detail

2 everything they do.

3 So before they get to this spot, what

4 they've done is taken ten of these from a -- from

5 a -- a pool of ten possible logos and stuff. They

6 do pretest, with people from Amazon mechanical

7 turf. So it's, essentially, a way of getting a

8 cheap, kinda poll of random people.

9 And so they -- so they do -- they test

10 all these different, you know, logos --

11 Q Okay.

12 A -- identifications. And this is a sub

13 selection, which is de fact to -- found to be the

14 most extreme actual identifiers.

15 Q Okay.

16 A So yeah. So that's -- so yeah, that's a

17 good concern.

18 Q Yeah.

19 A They address it.

20 Q Let me just hold you up. Because we're

21 referring to this. I think -- let me just mark --

22 A Yeah.

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1 Q -- this --

2 A Sure.

3 Q -- and then we have something we can

4 refer to.

5 A Yep.

6 (Defendants' Deposition Exhibit No. 3

7 marked for identification.)

8 BY MR. DAGUE:

9 Q Okay. Doctor, just for the record, I've

10 handed you what's been marked as Defendants'

11 Exhibit 3. I represent to you that this is a copy

12 from an online version of "Fear and Loathing Across

13 Party Lines" by Shanto Iyengar and Westwood.

14 Just quickly, is this the article that

15 you've relied on in your expert report, excluding

16 the supplemental materials you just referenced?

17 A That's correct.

18 Q Okay.

19 A And I'll -- I'll just also call attention

20 on the last page. It says, Additional supporting

21 information to be found on the online version. And

22 then where it also says, Measure and sample

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1 information are included in supporting information.

2 Q Okay. So just to kind of close the loop

3 on this --

4 A Yes.

5 Q -- when you were talking about the logos

6 and things, were you talking about the logos in the

7 associational BIAT portion of the study that are

8 found on page 4 of the study?

9 A Yeah, so the -- like the NRA logo and the

10 Greenpeace logo, these were part of much longer

11 lists of logos which were first pretested to find

12 out which are the most discriminate --

13 Q Okay.

14 A -- in -- in, you know, essentially

15 sorting partisan identity and affiliation.

16 Q Okay. Now -- so from the supplemental

17 materials, we find out that these eight logos had

18 been whittled down from a larger pool, fair?

19 A Yes.

20 Q And they were whittled down based upon

21 severity of reaction in the polling populace?

22 A Yes. Yeah. Yeah.